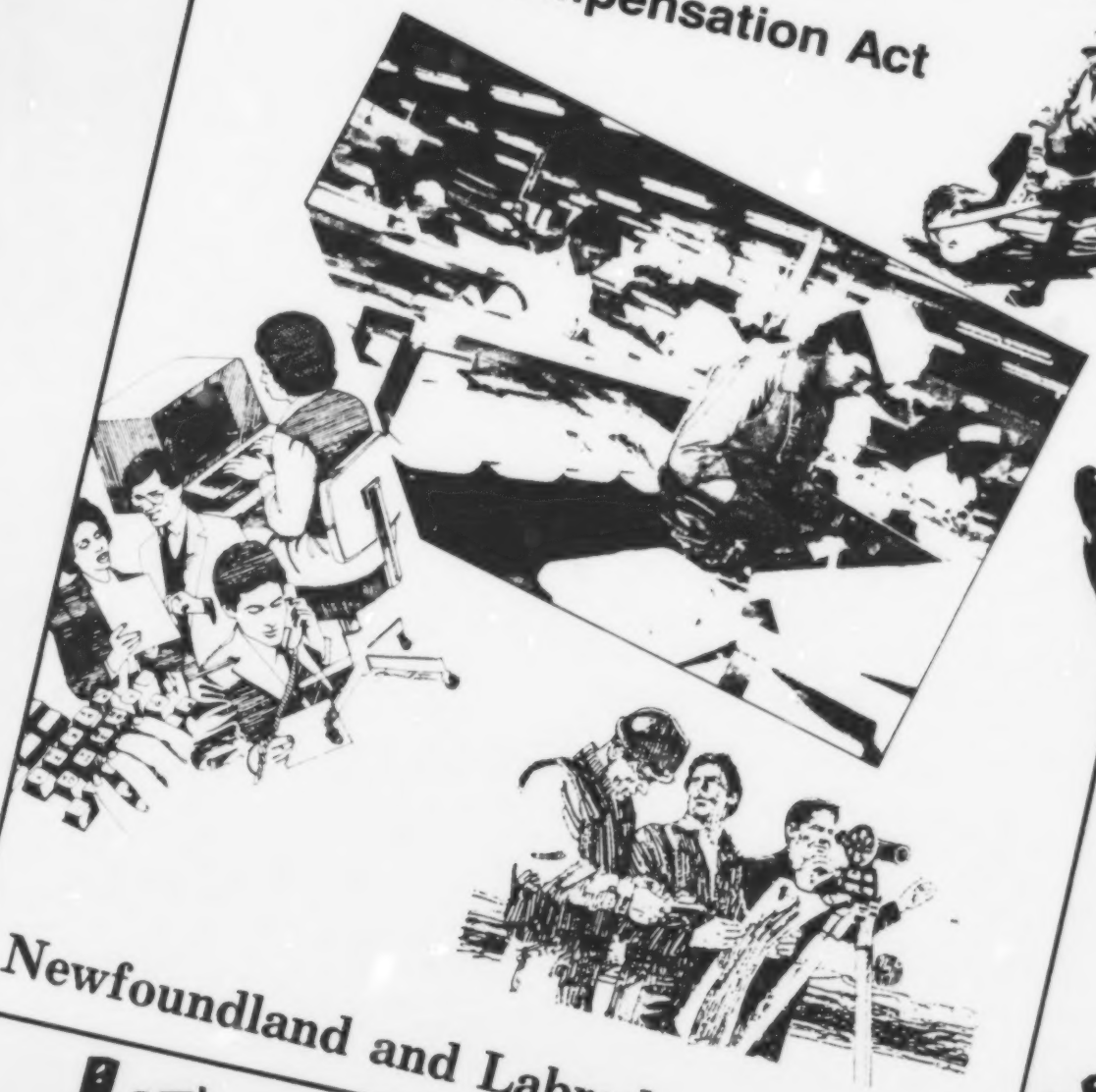
Newfoundland and Labrador
Workers' Compensation Act
Review Committee

Report of the Review Committee Workers' Compensation Act

February 1988



Newfoundland and Labrador

REPORT OF REVIEW COMMITTEE 1988

WORKERS' COMPENSATION IN NEWFOUNDLAND AND LABRADOR

FINAL DRAFT
February 17, 1988

The Honorable T.A. Blanchard
Minister of Labour
Confederation Building
St. John's, Newfoundland.
A1C 5T7

Dear Sir:

We are pleased to present our report on the Review of the Workers' Compensation Act, 1983.

Respectfully,

Mr. V. Withers
Member

Mr. E.P. Griffin
Chairman.

Mr. C. Winsor
Member

Ms. G. Harding
Vice-Chairman

Mr. R. Emberley
Member

Mr. M. Saunders
Member

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Preface

The Workers' Compensation Act, 1983, S.N. 1983, s.114(2) provides:

> The Lieutenant-Governor in Council shall at least once in every five years, from the commencement of this Act, appoint a committee of at least three members which shall review, consider, report and make recommendations to the Lieutenant-Governor in Council upon such matters respecting this Act and the regulations and the administration of each as the committee deems fit and upon any other of those matters which the Lieutenant-Governor in Council or the Minister may refer to the Committee.

The Lieutenant-Governor in Council pursuant to the said s.114(2) by Order-in-Council dated the 4th day of November 1986, established a committee, known as 'The Review Committee on Workers' Compensation, 1986-87'.

The following persons were appointed to the Committee:

E.P.(Ned) Griffin	Chairman
Gloria Harding, LL.B.	Vice-Chairman
Ralph N. Emberley	Labour Representative
Martin Saunders	Labour Representative
Chesley E. Winsor	Employer Representative
Vincent Withers	Employer Representative

The following persons acted as support staff for the Committee; Margaret Walsh, Executive Secretary and Gloria Harding, Legal Counsel.

The specific terms of reference of the Review Committee as set forth by the Minister of Labour for the Province of Newfoundland and Labrador, Mr. T.A. Blanchard, are as follows:

> To review and report on matters respecting legislation, policies and administration of the workers' compensation system in the Province of Newfoundland and Labrador. Without limiting the generality of the foregoing, to specifically report on, and make recommendations pertaining to:
>
> 1. whether current legislation is deficient in any manner or form, by way of omission or otherwise;
>
> 2. whether the structure and administration of the Commission is suited to providing benefits to injured workers on a fair and equitable basis;
>
> 3. whether the current system of compensation provides just and equitable benefits to workers;
>
> 4. whether the legislation, including its spirit and intent, is being properly applied;
>
> 5. any other matters which, in the opinion of the Committee, are pertinent to its mandate of recommending improvements in the system.
>
> The Committee is requested to hold public hearings throughout the Province, including Labrador, to ensure that all interested parties have an opportunity to present either oral or written briefs.
>
> All Commission files relating to administration, policies, programs, claimants, and employers shall be available, as required, to the Committee.

The Committee held 26 public hearings throughout Newfoundland and Labrador to ensure that all interested parties, including injured workers, employers groups, and labour unions, as well as any others directly or indirectly involved, had an opportunity to

present either oral or written submissions. The Committee heard 114 presentations during its public hearings of which 78 were from injured workers' and received 24 written submissions not presented at the public hearings. We also met with Management and Staff of the Workers' Compensation Commission.

The Review Committee advertised extensively to ensure that all interested parties were aware of the dates, times and locations of the public hearings in their particular area. We published an advance notice on December 13, 1986, in the Evening Telegram, St. John's, and each of the newspapers across the Island and Labrador notifying that public hearings would be held. On January 10, 1987 a schedule of public hearings was published in all newspapers across the Island and Labrador. Subsequently, a notice of Public Hearings was placed in the appropriate newspapers setting forth the dates, times and locations of the hearings.

Press releases were made to all appropriate television and radio stations within the Province to inform interested parties of the hearings.

To reach as many people as possible, a letter, setting forth the schedule of public hearings, was also sent to interest groups, labour and employers organizations across the Province, for inclusion in their group mailings and publications. It is estimated that this letter reached some 2,500 individuals, employers and interest groups. The Committee invited these groups, or their members to participate in the public hearing process.

The Legislation and practices of this Province were compared to that of other Provinces and two members of the Committee travelled to Ontario to study the Workers' Compensation system in that Province.

The Committee studied the Touche-Ross Comprehensive Review, dated November 17, 1986, which review was undertaken at the request of the Commission. This report is an in depth study of the management, administration and operational processes of the Commission. We also reviewed the Evaluation of the Rehabilitation Programmes of the Workers' Compensation Commission of Newfoundland and Labrador, as prepared by the Institute of Social and Economic Research (ISER), Memorial University of Newfoundland. Both these reports were of value to this Committee in the making of its recommendations.

Participation in the public hearing process was considerable and in total 219 issues were raised. It should be noted that each and every concern brought to our attention has been considered. This report focuses mainly on major areas of concern and makes the necessary recommendations for improvement.

We realize that this report was not finalized within the original time limits stipulated. However, the logistics of planning meetings around the private schedules of the Committee, the number of Hearings and the number of issues raised all contributed to the extra time needed. Added to these was the considerable time spent in interviewing Commission staff and the amount of research and deliberations required to deal with the more contentious issues.

In this report we have endeavoured to balance the interests of workers and employers while at the same time ensuring benefits that are structured to meet the needs of the injured worker.

All recommendations made are as a result of a majority decision of the Committee.

The Committee wishes to thank all organizations and individuals for their submissions and the Management and Staff of the Workers' Compensation Commission in St. John's, Grand Falls and Corner Brook for their co-operation.

Throughout this report wherever masculine gender is used it is meant to apply to both genders.

SUMMARY OF RECOMMENDATIONS

CHAPTER 2—CLAIMS

Page 15-17

1. To ensure that compensation is paid within two weeks of receipt of an injured workers Form 6 the Commission shall institute a written policy whereby if the Employer's Injury Report, Form 7, has not been received within 3 days after receipt of the Injured Worker's Report the claims adjudicator shall, by telephone, verify the claim with the employer. Where there is no dispute, compensation payments be commenced immediately.

2. That the Commission implement a written policy requiring that the claimant be informed immediately after receipt of notification by the employer that his claim is disputed. Reasons for dispute to be communicated to the claimant.

3. That Form 6 be self-duplicating.

4. That s.44 of the Act be amended by adding the following:
(4) An employer shall maintain at his place of business, a supply of Form 6, Injured Worker's Report, for use of employees.

5. That the Commission institute a written policy requiring that claimants be furnished with detailed written reasons for rejection of their claim.

6. The Committee recommends that proper interpretation of ss.49, 48(1) and 19(4) of the Act be clearly communicated to the appropriate staff of the Commission.

CHAPTER 3—BENEFITS

Page 18-25

7. That the Commission institute a written policy whereby notice of benefits cut off be given to a claimant at least one pay period prior to the cut off date together with sufficient written reasons.

8. That s.61 of the Act be amended by adding after (c) the following:
(d) That where "no active treatment" is being given to a claimant and a referral is made for him to receive a medical assessment, temporary earnings loss benefits shall continue until such time as a final determination is made.

9. That s.61 of the Act be amended by adding after (d) the following:
(e) that where a claimant has reached maximum medical recovery and is awaiting rehabilitation services temporary earnings loss replacement benefits be continued.

10. That s.52 of the Act be amended by adding after (d) the following:
(e) a worker persists in conducting himself in a manner that tends to imperil or retard his recovery, after notification thereof in writing, by the Commission.

11. That if during recovery from a work related lost time injury a claimant is further incapacitated by an intervening injury or disease such claimant should continue to receive compensation benefits without interruption for the full term of the normal period of time for recovery from the lost time injury.

12. That the Permanent Functional Impairment Award be applied on a sliding scale based on age. The fixed amount for 100% disability would be $45,500.00 at age 40 decreasing 1% for each year the worker's age is over 40 and increasing by 1% for each year the worker's age is under 40. The amount of a permanent physical or mental impairment award is then a percentage of the maximum amount payable to a worker, at the time of his employment injury, based on his age at that time.

13. That the Provincial Government take immediate action to discuss the necessary changes in Unemployment Insurance and Canada Pension Plans with other Provincial jurisdictions, with a view to persuading the Federal Government to make the necessary legislative changes to maintain continuity of eligibility for Unemployment Insurance and Canada Pension Plan benefits for the claimant suffering lost time injuries.

14. That the Commission issue a written policy stating:

A. where deeming is used in setting benefit structures the following criteria must apply:
   1. The worker must be capable of performing the work.
   2. The worker must be qualified for the work.
   3. There must be reasonable opportunity to obtain the work. i.e. work of that nature exists. It does not necessarily mean that there is an actual job opening.

B. That deeming should be only legitimate when the following circumstances exist:
   1. The worker has refused an actual job offer within his physical limitations. In this case the basis for deeming is obvious—the salary of the job which the worker has refused.
   2. The worker has completed an appropriate rehabilitative training programme. In this case the basis for deeming would be the average starting salary of the position for which he was trained.
   3. The worker has refused to take appropriate rehabilitation training. In this case, the basis for deeming would be the average starting salary of the position for which he would have been trained.
   4. The worker has voluntarily retired from the labour force—either through the acceptance of early retirement or through staying home for personal reasons. This is the only situation where the exercise of some judgment is necessary for there may in fact not be an actual job which can be applied in deeming that individual.

C. Where a claimant is not an appropriate candidate for rehabilitation then no deeming should be apolied.

15. That meal allowances be increased from $4.00 to $5.00 for breakfast; from $6.00 to $7.00 for lunch and from $8.00 to $10.00 for dinner.

16. That the Workers' Compensation Commission pay mileage at the rate of 20.5& per kilometer.

17. That these travel costs be reviewed on an annual basis.

18. That payment of expenses be made by the Commission within two weeks of the receipt of same by the Commission.

19. That annual cost of living increases be made for disability benefits and such increases be in line with the increase in the Average Industrial Aggregate Weekly Wage.

20. That the Act be changed to allow the Board of Directors to make such annual increases.

21. That employers be required to continue major benefit plans for at least one year following a compensable injury to a worker. If the plans are cost-shared then the injured worker must continue payment of his share of the premiums for such coverage.

22. That the lump sum Death Benefit payable to a surviving spouse be changed and a new structure be implemented based on 2-½ times the Average Industrial Aggregate Weekly

Wage and the spouse's age at the time of the fatality plus or minus 1% per year for each year under or over age 40.

23. That the surviving dependent spouse should have a choice of electing to receive the Death Benefit in a lump sum payment or as a monthly pension.

24. That in addition to the payments received pursuant to s.s.53, 54 and 60 the Act be changed to provide a Death Benefit payable to surviving dependent children where they are the sole survivors of a deceased worker pursuant to the Act.

25. That Regulation 19(1)(h) be amended by deleting the words "not exceeding $1,500.00" and replacing with the words "not exceeding $3,000.00". That this amendment be made effective January 1, 1989.

26. That in Section 60(1) of the Act and Regulations 19(1)(b) and (e) the age limit for dependent children be changed from "16" to "18" years.

27. That the existing annuity plan be put on hold until a proper financial analysis is conducted to determine the full impact of the annuity fund on claimants and the injury fund and any inequities found be rectified.

28. That a complete actuarial study be commenced immediately to determine the financial impact of conversion of old Act pensions to benefits payable under the new Earning Loss Replacement provisions of the Act. This study to be done in conjunction with the financial analysis we propose for the annuity.

CHAPTER 4—REHABILITATION

Page 26-3

29. That written procedures be put in place to provide for greater participation by the claimant in establishing his personal rehabilitation objectives.

30. That highly specialized on-going training be mandatory for counsellors to equip them to respond to the complex needs of claimants.

31. That written policies and guidelines be implemented for counsellors to ensure consistent application of rehabilitation services to claimants.

32. That within one year rehabilitation counsellor's caseload be reduced to fifty.

33. That the Commission adopt a written policy whereby in the case of a seriously injured worker the rehabilitation department is notified immediately and the counsellor makes personal contact with the claimant as soon as practicable. In other cases where the need for rehabilitation services is obvious notification to the rehabilitation department should be made not later than 12 weeks from the commencement of the claim and personal contact made with the claimant.

34. That the Commission adopt a policy requiring a field visitation programme for counsellors with a monitoring system to ensure that visits occur on a regular basis.

35. That the notice of admittance to claimants more clearly explain the rehabilitation services provided by the Miller Centre.

36. That the Commission ensure all claimants referred to the Miller Centre be counselled prior to entry as to the reasons for the assessment and what programmes they will be expected to participate in.

37. That Counsellors be more fully versed in the nature of programmes at the Miller Centre

to enable them to better understand and help claimants overcome their natural fears when required to submit to assessment procedures.

38. That the Commission commence research within the next two years as to its long term needs for educational and medical facilities.

39. That s.77 of the Act be changed by adding after "provide that worker with such Academic or Vocational training" the words "or permanent relocation benefits, if necessary".

40. That s.76 of the Act be amended by adding as s.76(d), the following:
to assist in the rehabilitation of an injured worker by providing periodic trips home, as in the sole discretion of the Commission it deems advisable, to a person who has, because of training or retraining, to leave his home for a course of education or employment.

41. That s.76 of the Act be changed by adding after s.76(c) the word "or" and adding as 76(d) the following: to assist a surviving dependent spouse by providing counselling services, if required.

42. That the Commission provide for an Employment Specialist so that every effort is made to return injured workers to the workplace. The Employment Specialist's duties should be set out in accordance with those outlined above.

CHAPTER 5—INDUSTRIAL DISEASE

Page 32-34

43. That s.78 of the Act be amended by adding immediately after paragraph (6), the following:

(7) Where a worker is no longer engaged in the trade, occupation, profession to which the disease is due, the Commission shall pay compensation to the said injured worker or his dependent based on an amount not exceeding the Annual Industrial Aggregate Weekly Wage subject however to sub-sections 8, 9, and 10 hereof.

(8) in no case shall compensation payable pursuant to Section (7) hereof be paid if the worker was at the time of diagnosis over the age of 75 years.

(9) A worker referred to in (7) hereof is presumed to have contracted a disease if he was employed in any process prescribed and the disease contracted is the prescribed disease associated with the description of the process.

(10) neither a worker nor a dependent is entitled to compensation pursuant to paragraph (7) unless the worker:

(a) has been a resident of the Province for a period of at least three years last preceding his diagnosis, or, at least 2/3 of his exposure was in the Province;

(b) was free from such occupational disease before being first exposed to same in this Province;

(c) has been a worker for a period or periods aggregating three years preceding his diagnosis, or for a lesser period if the worker was not so exposed anywhere except in this Province.

44. That the Commission change its written policy on Hearing Loss to read 85db(A) as the minimum acceptable exposure and that claims be allowed for 15 months exposure to noise at that level.

45. That the Government of Newfoundland conduct a case by case review of the current situation of the widows of St. Lawrence miners with the view to having the appropriate agency take the necessary action to address any special needs that exist.

46. That Section 79 be removed from the Act.

47. That the Commission ensure that there is closer liaison between the Commission and the family doctor; that liaison be established with the Newfoundland Medical Association to make doctors more aware, by way of workshops, seminars, etc., of the Workers' Compensation system so that unnecessary delays and interruptions of benefits are minimized.

48. That the Commission enter into a formal arrangement with the Pharmaceutical Association covering the following:
- —The criteria to establish eligibility.
- —An approved benefit list.
- —Schedule of prices to be charged for pharmaceutical services.
- —Payment of claims process.
- —Approved forms for billing claims.

49. That the Commission continue to use the Functional Impairment Rating Schedule and, when deemed necessary by the Medical Department, also use the American Medical Association Guides for Rating Impairment.

50. That decisions of the Medical Department with regard to percentage of disability be binding on the Claims Department.

51. That the Commission adopt a written policy that claimants be advised that the acceptance or rejection of medical/surgical treatment is not the determining factor in relation to continuity of benefits.

52. That policy 86-09 of the Commission be changed to provide that true cases of chronic pain be adjudicated as other claims for which compensation is awarded. Where chronic pain results from an injury which "arose out of and in the course of employment" then the Commission remain responsible for continuing benefits. If the chronic pain is a pre-existing condition it is to be handled as would any other pre-existing condition.

53. That injured workers experiencing chronic pain syndrome receive the necessary assistance to enable them to eliminate, reduce, or cope with chronic pain.

54. That the Act be amended to provide for Modified Work Programmes.

55. That each programme have the consensus of the attending physician, the Commission, the employer and the worker.

56. That a modified work program be offered to an injured worker if the attending physician believes:
- —the worker is reasonably fit to perform the work;
- —the work, despite the worker's injury, does not endanger his health, safety or physical well being;
- —the work is beneficial to the workers' rehabilitation.

57. That all modified work programmes be monitored by the Commission.

58. That the employees remuneration be agreed between the Commission and the employer and the difference between this and the pre-injury rate be paid by the Commission.

59. That every effort be made by the Medical Department of the Commission to ensure that injured workers who are not progressing at the desired rate of recovery be admitted to the Miller Centre for medical assessment within three months from the commencement of their claim.

60. That in no event should an injured worker have to wait more than six months after injury for admittance to the Miller Centre except for extenuating circumstances.

61. That Chiropractic services be recognized by the Commission on referral only by the Medical Department.

62. That the Commission continue its present policy 81-06 as it relates to cardiovascular events.

63. That the Commission in conjunction with the Occupational Health & Safety Division make extensive use of seminars, workshops and other educational programmes for employers, workers, counsellors and doctors in the prevention and treatment of back injuries.

CHAPTER 7—ADMINISTRATION AND OPERATIONS OF THE WORKERS' COMPENSATION COMMISSION

Page 42-47

64. That the Act be changed to eliminate representation on the Board of Directors by members of the public.

65. That the Act be changed to state the number of Directors on the Board to be seven made up of three representatives of workers, three representatives of employers and an independent chairman.

66. That all appointments to the Board of Directors be made in consultation with labour and employer organizations.

67. That the organizational structure recommended by Touche Ross be completed by the Commission as soon as practicable by the addition of an Executive Director, Programme Services.

68. That a comprehensive Strategic Corporate Plan be implemented as soon as possible to ensure proper management of the Commission's development and resources.

69. That more consistent general administrative policies and procedures be developed by the Commission and that a process be developed for approval of policies and procedures.

70. That a policy and procedure manual must be prepared in a format to ensure ease of use.

71. That the Commission ensure that all management and staff are well versed on the intent and application of all policies.

72. That a formal training programme be developed and implemented for Commission employees.

73. That within the next twelve months highly professional staff, such as adjudicators and counsellors, receive ongoing specialized training in their fields to more adequately serve the needs of injured workers.

74. That the Commission develop a field audit policy and strategy that provides for the proper monitoring and regular auditing of all employers.

75. That the role of investigator be re-established by the Commission and that a qualified

claims investigator be added.

76. Undertake, in consultation with user managers, a comprehensive inventory of systems development requirements covering new system enhancements and overall reviews of major operating systems.
Recruitment of an additional permanent analyst/programmer for the Department.
Ensure that all policy issues potentially affecting information systems are reviewed and discussed at the Executive Committee to facilitate effective two-way communications on systems related issues and priorities. Develop training sessions for programme department supervisors to improve their knowledge and awareness of the capabilities of the information system.

77. That the Commission prepare a comprehensive user-needs space plan giving special consideration to the privacy needs of claimant, adjudicator and counsellor.

78. That the first floor of the building be utilized to provide basic first contact type services to the claimant including a waiting room/information/reception area and an enquiries desk.

79. That a quarterly visitation programme be established for the Labrador region, with advance public notice of each visit.

80. That one of the existing staff be designated to manage each Branch Office.

81. That the physical space in the Branch Offices be utilized to provide the needed privacy for dealing with claimants.

82. That regular bi-monthly visits be made to each Branch Office by Senior Management as a means of improving communications with head office.

CHAPTER 8—FINANCIAL OPERATIONS WITHIN THE COMMISSION

Page 48-50

83. That a Budget and Financial Reporting Programme be developed and implemented in 1988.

84. That comprehensive written guidelines be developed immediately to provide for the proper financial management of the Commission's funds.

85. That the Commission appoint an Internal Auditor who will report to the Chief Executive Officer.

86. That an Audit Committee of the Board of Directors be set up to direct and review the activities of the internal and external audit programmes.

87. That the Collections Officer be responsible for the development and implementation of a comprehensive collections system to reduce outstanding accounts receivable to an acceptable level.

88. That the Commission make more use of s.106(2) of the Act to restrain employers from carrying on any industry until their assessments are paid.

89. That in all cases of overpayment to claimants the Commission ensure collection. Such overpayment should not be charged to the employer's experience.

90. That the Commission develop a clear written policy and strategy for an investment

management programme including the determination of the need for external assistance and expertise.

91. That the following additional information be contained in the Annual Report of the Commission.
- —Internal and External Appeals statistics.
- —Activities of the Commission such as rehabilitation programmes, merit-demerit programmes and staff training and development.
- —Rehabilitation statistics showing the scope and success of the rehabilitation programme.
- —Any significant changes to the Workers' Compensation Act since the previous report.
- —Investment management results including cost, yield and market value.
- —A report on Occupational Health and Safety programmes and statistics.
- —Field audit and investigations statistics.
- —Graphic illustrations and supporting statistical data.

CHAPTER 9—ASSESSMENT ISSUES

Page 51-52

92. That prior notice of intention to make rate changes be communicated to employers by September 30th of each year.

93. That the consultative process recommended in Chapter 8 be used as a means of allowing employers input into assessment issues.

94. That s.113 of the Act be strictly enforced against all persons or businesses operating an industry covered by the Act where it is found that they are not registered with the Commission.

95. That the Commission establish and utilize a process to identify all unregistered businesses. This could include obtaining information from Retail Sales Tax, Registry of Companies, etc.

96. That coverage be extended to students of private schools who are placed in "on the job training" programmes and that a system be put in place for payment of assessments by such schools.

97. That Newfoundland liaise with Nova Scotia and Prince Edward Island for the establishment of Reciprocal Agreements covering Workers' Compensation assessments.

CHAPTER 10—MERIT-DEMERIT RATING

Page 53

98. That a Committee comprised of the Commission, employer and employee representatives be appointed immediately to fully research and recommend a merit-demerit system.

CHAPTER 11—APPEALS

Page 54-56

99. That s.21.7(1) be amended by adding at the end thereof: "and the decision of the Appeal Tribunal shall be final and binding on the Commission".

100. That s.22(1)(a) be amended by deleting the ";" and adding the words "or the Appeal Tribunal's jurisdiction".

101. That reasonable time limits be set forth in the Act or Regulations, setting forth the time limits for all steps involved in the appeal process.

102. That all future appointments to the External Appeal Tribunal shall be made after consultation with labour and employer groups.

103. That a complete review of the appeal system be conducted within two years to determine whether a full time External Appeal Tribunal is necessary.

CHAPTER 12—WORKERS ADVOCATE

Page 5

104. That an independent tripartite study, made up of representatives from the Commission, labour and employers, be conducted within two years from the date of this report to study the advisability of creating the role of Workers' Advocate within the Newfoundland Workers' Compensation system.

105. That the Commission immediately create the necessary computer programmes to accurately collect all information necessary to enable the study team to properly assess the need for Workers' Advocate.

106. That if the result of the study team review indicates the advisability of creating the role of Workers' Advocate then it be implemented immediately.

CHAPTER 13—OCCUPATIONAL HEALTH & SAFETY

Page 5

107. That the Commission enter into a partnership with the Occupational Health & Safety Branch for the development and implementation of programmes that will identify and address the safety training and accident prevention needs in the workplace.

108. That the Workers' Compensation Act and the Occupational Health & Safety Act be amended to set parameters of the relationship between the Commission and the Branch in relation to the promotion of occupational health and safety in the workplace.

109. That adjudicators and counsellors be given formal training in Occupational Health and Safety matters. That they be encouraged to attend seminars, workshops, etc. provided by Occupational Health and Safety.

CHAPTER 14—THE LEGISLATION IN GENERAL

Page 59-61

110. That the Act be amended to include specific power for the Appeal Tribunal to make regulations.

111. That s.114 of the Act remain in the Workers' Compensation Act.

112. That the Annual Report of the Workers' Compensation Commission include an up to date report of any implementation of the Review Committee's recommendations.

113. That no changes be made to legislation governing Workers' Compensation within one year of the appointment of and during a Review Committee's deliberations pursuant to s.114 of the Act.

114. That prior to any changes to the Workers' Compensation Act or Regulations, Labour and Employer groups be advised thereof to allow adequate time for their input prior to implementation of changes.

115. That future Chief Executive Officers be appointed "at pleasure" or for a "term certain" by the Board of Directors.

116. That no major changes be made to the benefit structure of the Workers' Compensation system without an in-depth study of the overall impact of such change.

CHAPTER 15—COMMUNICATIONS

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117. That the Commission provide extensive ongoing training for staff to enable them to communicate more effectively.

118. That to address the communication problems outlined in this report the Commission should immediately provide for the services of a communications specialist. This position should also include the public relations function of the Commission.

119. That the Commission establish a formal consultative process with employer and employee representatives with respect to any proposed significant policy and programme changes.

120. That The Commission make all policies and procedures available to all interested parties.

121. That the Commission institute a programme of workshops and seminars, etc. for employers, employees, claimants and the medical profession to ensure effective communication regarding Workers' Compensation programmes, policies and procedures.

122. That the Commission make immediately available to all of Newfoundland and Labrador a toll free number.

Chapter

1 THE WORKERS' COMPENSATION SYSTEM IN NEWFOUNDLAND AND LABRADOR

1. HISTORY OF WORKERS' COMPENSATION IN NEWFOUNDLAND

Although Workers' Compensation legislation existed in Newfoundland prior to Confederation it was not until April 1, 1951 that Workers' Compensation legislation in this Province was changed in line with the report of Sir William Ralph Meredith, who was appointed in 1910, by the Government of Ontario to study Workers' Compensation schemes and who recommended Workers' Compensation as we know it today.

Over the years Workers' Compensation legislation developed into a system which paid benefits for disability and it was only on January 1, 1984 that Newfoundland returned to Sir William Ralph Meredith's concept of an earnings loss replacement system of compensation.

Workers' Compensation is a no fault insurance scheme paid for solely by Employers whereby employees injured in the course of their employment are paid compensation for earnings loss. Prior to this system of compensation an employee injured on the job had to resort to litigation in the courts. This was entirely unsatisfactory for several reasons. Firstly, "fault" on behalf of the Employer had to be proven before compensation was payable and secondly, many workers were reluctant to take their employers to court because of fear of losing their job and/or the cost to the employee was prohibitive. The trade off for the employee in Worker's Compensation is that the employee is no longer able to sue his employer for injuries received at the workplace.

In 1987 the whole foundation of Workers' Compensation in Newfoundland and Canada was brought into question. The landmark decision of Chief Justice Alex Hickman, of the Supreme Court of Newfoundland in the case of *Piercey* v. *General Bakeries Limited*, (1987), 185 A.P.R. 147 determined that ss.32 and 34 of the Workers' Compensation Act of Newfoundland were inconsistent with s.15 of the Charter of Rights and Freedoms and therefore of no force and effect. This decision effectively removed the protection afforded by the Act to employers and again opened the door to litigation by employees against employers for injuries received in the course of their employment.

s.15(1) of The Canadian Charter of Rights and Freedoms reads:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

This equality is limited by s.15(2) which states:

> Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

and limited only by s.1 of the Charter which provides:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

A reference to the Court of Appeal for Newfoundland on the constitutionality of ss.32 and 34 of The Workers' Compensation Act, 1983 was subsequently made and the decision of that Court was rendered on October 23, 1987 wherein it was determined that ss.32 and 34 of the Workers' Compensation Act, 1983 were valid and not inconsistent with s.15(1) of the Canadian Charter of Rights and Freedoms.

The Court, at pp 45 and 46 stated:

> The Charter was not designed to interfere with beneficial social programs of the legislature. It was not designed to regulate or patrol these programs. Only where there is contained in the program something that is unfair or unreasonable will courts interfere.
>
> The Workers' Compensation scheme provides a stable system of compensation free of the uncertainties that would otherwise prevail. While there may be those who would receive less under the Act than otherwise, when the structure is viewed in total, this is but a negative feature of an otherwise positive plan and does not warrant the condemnation of the legislation that makes it possible. Judicial deference to the legislative will is required here.
>
> Upon an overview, the scheme of compensation under the Act cannot be said to be either unfair or unreasonable. While there may be inequalities, there is no discrimination and the legislation cannot be condemned as being inconsistent with s.15(1) of the Charter.

It now remains to be seen whether this case will be heard by the Supreme Court of Canada for a final determination. In the meantime Workers' Compensation in Canada remains.

2. GENERAL PRINCIPLES OF WORKERS' COMPENSATION

There is no preamble or philosophy set forth in the Workers' Compensation Act and the Committee therefore sets forth the following principles which it believes form the basis of the Workers' Compensation system:

1. The Workers' Compensation system is a no fault insurance system which compensates workers for earnings loss suffered through injury during the course of employment.

2. Employers are collectively responsible to provide sufficient funds to ensure payment of compensation benefits.

3. The administration and adjudication of a claim is made by an independent commission.

4. The ultimate aim of the Workers' Compensation system is to return a worker to the workplace and, if necessary, provide the worker with rehabilitation services to attain this goal.

5. Except on issues of Law or jurisdiction the Workers' Compensation Appeal Tribunal is the final arbiter and the decisions are not subject to review by the courts.

6. The Injured Worker must aid in his return to the workplace by availing himself of any medical or rehabilitative services offered by the Workers' Compensation Commission.

Chapter

2

CLAIMS

The Claims process is the most important aspect of Workers' Compensation. This is where injured workers deal with the Commission.

The year 1986 showed a 17.6% increase in claims over those processed in 1985. In fact, some 19,355 claims were processed. We were told that while the total number of claims has not increased in 1987 there was a slight increase in Lost Time Claims.

To enable the Commission to deliver prompt and efficient service the Workers' Compensation Commission must have the full co-operation of the worker, the employer and the physician.

We point out that the development of efficient delivery of service is constantly being monitored by the Commission. In the past claimants had to wait too long for their benefit payments. The Commission now issues cheques every day thus eliminating some of the problem with lateness in payment of claims.

In light of the degree of negative feedback received on this issue during our public hearings, the claims process has been thoroughly reviewed by the Committee. The following represents our view of the needed changes to ensure that the Workers' Compensation system responds to the injured worker in a timely and cost efficient manner.

1. PAYMENT OF CLAIMS— FORM 6, 7, and 8

The initial adjudication of a claim does not take place until receipt by the Commission of Form 6, Injured Workers Report; Form 7, Employers Accident Report and Form 8, Physicians Report. Delays on the part of either the injured worker, the employer or the physician will result in considerable delay in payment on a claim.

Statistics received from the Commission show that an average period of 15 days elapse after the date of the accident before a claim is opened; that is on receipt by the Commission of either Form 6, 7, or 8; and another 29 days from the date a claim is opened to the date of first payment. This represents some 44 days after the accident date. Reports to this Committee indicated that some workers wait up to 6-8 weeks before receiving payment. This clearly is unacceptable.

Most delays are due to the failure by the employer to file his report, Form 7, on time.

The present policy of the Commission does not allow for payment on receipt of Form 6, the Injured Workers' Report, alone. On occasion the Commission will proceed to payment on receipt of Form 6 and Form 8 in serious injury cases where there is no obvious dispute that the accident occurred during and in the course of employment.

The Committee is of the opinion that the injured worker, after submitting his claim should not be penalized by having to wait 6-8 weeks for the claim to be processed simply because the employer has neglected to file his report on time. The Committee feels that the Commission should institute a policy whereby if the employer's Report of Injury is not in the hands of the Commission within 3 working days after receipt of the Injured Workers Report the Claims Adjudicator should, by telephone, verify the claim with the employer. If the claim is not in dispute, compensation should commence immediately. The result would be that on a new claim, compensation would be made within a two week period from the date of the reporting of the injury by the injured worker, thus eliminating the unacceptable 6-8 week delay presently being experienced.

Recommendation

1 To ensure that compensation is paid within two weeks of receipt of an injured workers Form 6 the Commission shall institute a written policy whereby if the Employers Injury Report, Form 7, has not been received within 3 days after receipt of the Injured Workers Report the claims adjudicator shall, by telephone, verify the claim with the employer. Where there is no dispute, compensation payments to be commenced immediately.

2. DISPUTED CLAIMS

The Committee has received complaints from claimants that they were unaware that their claim was disputed by their employer. The Committee believes that the claimant has the right to know if his claim is disputed and be given the reasons for same.

It is the Committee's opinion that the Commission should initiate a policy whereby upon receipt of notification by the employer that a claim is being disputed the Commission will immediately inform the claimant that his claim is in dispute and the reasons therefor. The claimant is then an informed claimant and the system is responding to him adequately.

Recommendation

2 That the Commission implement a written policy requiring that the claimant be informed immediately after receipt of notification by the employer that his claim is disputed. Reasons for dispute to be communicated to the claimant.

3. NOTICE OF INJURY

s.41(1)(a) of the Act states that no compensation is payable unless the injured worker gives "notice" of the injury to his employer "as soon as practicable". However the Act does not state the manner in which such notice is to be given. Considerable comment was made that although "notice" was given to the employer, the employer did not make a note of the injury or its records were lost.

The Committee can see that in certain situations hardship to the injured worker could result. This is true when no time is lost from work at the time of the injury but the worker subsequently loses time as a result of that injury. Without the original notice having been noted by the employer the injured worker may not receive benefits.

The Committee believes this problem could be eliminated if Form 6 were made self-duplicating. In this way Form 6 could be used by the worker in reporting accidents or occurrences to the employer where no claim is made for compensation as per Section 41(1)(a) of the Act and retain a copy for himself.

A further problem arises where claims for compensation have been filed with the Commission and have been misplaced or when further comments on the injury are needed to be made to the Commission and the injured worker does not have a copy of his claim or Form 6.

To alleviate these problems the Committee makes the following recommendation.

Recommendation

3 That Form 6 be self-duplicating.

4. AVAILABILITY OF FORM 6—INJURED WORKER'S REPORT

The Committee was advised that frequently employers do not have Form 6 at their place of business. We feel that employers should have a supply of Form 6 readily available at their place of business for the convenience of employees.

Recommendation

4 That s.44 of the Act be amended by adding the following:
(4) An employer shall maintain, at his place of business, a supply of Form 6, Injured Worker's Report, for use of employees.

5. REJECTION OF CLAIMS

While it is the stated policy of the Commission to give the claimant detailed reasons for rejection of a claim, the Committee was advised that the Commission does not always furnish detailed reasons to the claimant.

In view of this discrepancy we recommend that the Commission furnish detailed written reasons to the claimant when a claim is rejected.

Recommendation

5 That the Commission institute a written policy requiring that claimants be furnished with detailed written reasons for rejection of their claim.

6. BURDEN OF PROOF AND BENEFIT OF THE DOUBT

There is no doubt that, within the Commission, difficulties arise with the interpretation regarding burden of proof and benefit of doubt.

The public hearings clearly showed that the general perception among claimants is one of "I'm guilty until proven innocent". Claimants do not feel the presumptions in the Act operate in their favour. s.49 of the Act states:

> Where the injury arose out of the employment, it shall be presumed, unless the contrary is shown, that it occurred in the course of the employment, and where the injury occurred in the course of the employment, it shall be presumed, unless the contrary is shown, that it arose out of the employment.

Where an injury arose in the course of employment the claim must be allowed unless there is clear evidence that the injury arose from a cause not related to employment. s.48(1) of the Act further protects the claimant. It states:

> It is not necessary for a worker to adduce conclusive proof of his right to the compensation applied for, but the Commission shall draw from all the circumstances of the case, the evidence and medical opinions, all reasonable inferences in favour of the worker.

If there is any doubt the claimant is to receive the benefit. Further protection is afforded the claimant by virtue of s.19(4) of the Act which states:

> The decisions of the Commission shall be upon the real merits and justice of the case and it is not bound to follow strict legal precedent.

Recommendation

6 The Committee recommends that proper interpretation of ss.49, 48(1) and 19(4) of the Act be clearly communicated to the staff of the Commission.

Chapter

3

BENEFITS

The transition to the Earnings Loss Replacement system of compensation on January 1, 1984 provided the Province with a compensation system comparable to most systems in Canada. We believe that our recommendations will lead to a more progressive compensation system.

1. CONTINUITY OF BENEFITS

A. BENEFITS CUT OFF

The Committee received many complaints throughout its public hearings that benefits were being cut off without claimants being given adequate written notice of reasons. In some cases this resulted in a retroactive cut off of benefits. This should not occur.

The Commission should adopt a policy ensuring that notice of cut off be given to the claimant at least one pay period prior to the cut off date together with detailed written reasons.

Recommendation

7 That the Commission institute a written policy whereby notice of benefits cut off be given to a claimant at least one pay period prior to the cut off date together with sufficient written reasons.

B. WHERE NO "ACTIVE" TREATMENT GIVEN

Numerous injured workers have advised that their temporary earnings replacement benefits ceased during times when they were no longer receiving "active medical treatment". In some cases the injured worker was referred for medical assessment, either at the Health Science Complex or the Miller Centre. The period between the referral and actual admittance for the medical assessment spans several weeks or even months. During this time no benefits in the form of Temporary Earnings Loss are paid thus placing the injured worker in the unfortunate position of having no income.

The Committee found that while considerable improvement has been made by the Commission in lessening waiting periods it still takes over 30 days from the date of referral to the date of admittance to the Health Science Complex.

While efforts have been made to reduce the time for referral to the Miller Centre a claim is still in the system for 167 days before admission. Claimants are not denied benefits for all of that period but even if benefits were received to the date of referral there still exists a 16 day span when no benefits are received.

Recommendation

8 That s.61 of the Act be amended by adding after (c) the following:
(d) That where "no active treatment" is being given to a claimant and a referral is made for him to receive a medical assessment, temporary earnings loss benefits shall continue until such time as a final determination is made.

C. TRANSFER FROM TEMPORARY EARNINGS LOSS TO REHABILITATION

The Committee heard many complaints with regard to benefits being cut off and remaining so until commencement of rehabilitation. The period between termination of benefits and transfer to the rehabilitation department could span several weeks or months. The Commission has advised us they have recently introduced a new policy whereby benefits continue

through to rehabilitation.

Statistics from the Commission show that the number of days from Temporary Earnings Loss payment to initial payment in rehabilitation has decreased from 46 in 1985 to 6 in 1987.

Although this shows a much improved situation over the one indicated by claimants appearing at our public hearings, continuity of payments still remains a problem. These gaps in compensation, due to no fault on the part of the injured worker, should not exist and entitlement to claims benefits should continue until final determination of the case.

Recommendation

9 That Section s.61 of the Act be amended by adding after (d) the following:

(e) that where a claimant has reached maximum medical recovery and is awaiting rehabilitation services temporary earnings loss replacement benefits be continued.

D. SUSPENSION OF CLAIM WHERE CLAIMANT PERSISTS IN PRACTICES THAT RETARD RECOVERY

s.52 of the Act sets forth the power of the Commission to review compensation made to a claimant where he is not following medically prescribed treatment.

Representation has been made to the Committee that an amendment be made in the Act to provide that when an injured worker persists in practices which may retard or imperil his recovery compensation benefits will be reviewed. Such a change is a reasonable request.

The Committee believes that responsibility for the well-being of the injured worker not only rests with the Commission but with the injured worker himself.

Recommendation

10 That s.52 of the Act be amended by adding after (d) the following:

(e) a worker persists in conducting himself in a manner that tends to imperil or retard his recovery, after notification thereof in writing, by the Commission.

E. INTERVENING INJURY/DISEASE

The Committee also received complaints that claimants were being cut off from benefits early, because of an intervening injury or disease. We feel in this situation claimants are not receiving full benefits from the system.

Recommendation

11 That if during recovery from a work related lost time injury a claimant is further incapacitated by an intervening injury or disease such claimant should continue to receive compensation benefits without interruption for the full term of the normal period of time for recovery from the lost time injury.

2. PERMANENT FUNCTIONAL IMPAIRMENT AWARD

This award is currently a fixed amount based on the percentage of impairment applied against the $45,500.00 ceiling on Workers' Compensation coverage. It bears no relationship to either the age or the earnings of a worker. The younger a person is, the longer he will have to endure the impairment and consequently the award should take this into consideration. The Committee feels that it would be more equitable for the Permanent Functional Impairment Award to be applied on a sliding scale based on the age of the injured worker. The following example shows the compensation payable for a 100% permanent functional impairment award based on our recommended changes as opposed to the present situation.

100%
Permanent Functional Impairment Award

Age	Present Award	Recommended Award
65	45,500.00	34,125.00
60	45,500.00	36,400.00
40	45,500.00	45,500.00

30	45,500.00	50,050.00
20	45,500.00	54,600.00

* ± 1% for each year under/over age 40.

Recommendation

12 That the Permanent Functional Impairment Award be applied on a sliding scale based on age. The fixed amount for 100% disability would be $45,500.00 at age 40 decreasing 1% for each year the worker's age is over 40 and increasing by 1% for each year the worker's age is under 40. The amount of a permanent physical or mental impairment award is then a percentage of the maximum amount payable to a worker, at the time of his employment injury, based on his age at that time.

3. MAINTENANCE OF UNEMPLOYMENT INSURANCE and CANADA PENSION PLAN CONTRIBUTIONS

Strong representation was made to the Committee in connection with Unemployment Insurance Commission and Canada Pension Plan premium deductions made by the Commission to arrive at the net income figure in calculating benefit levels. These amounts however are not being paid on behalf of the injured worker. This can sometimes result in a loss of benefits under these plans.

Anyone with a valid Unemployment Insurance Commission claim can extend the qualifying period up to two years should a lost time accident occur. This does nothing for the injured worker who does not have a valid Unemployment Insurance claim. This injured worker is "out in the cold". For example, the injured worker, who after being on a lengthy compensation claim returns to work only to find he is laid off shortly thereafter, is denied Unemployment Insurance benefits as the contributions to the Unemployment Insurance Commission were not made for the qualifying period.

Canada Pension Plan premiums are also not paid for a Workers' Compensation claimant. This can have a significant adverse effect on a worker's pension in the latter years of his employment.

The Federal Government should be persuaded to implement changes to the Canada Pension Plan and Unemployment Insurance legislation to rectify these inequities. We firmly believe there is strong reason to protect the injured workers' Canada Pension Plan and Unemployment Insurance premiums while receiving Workers' Compensation benefits.

Recommendation

13 That the Provincial Government take immediate action to discuss the necessary changes in Unemployment Insurance and Canada Pension Plans with other Provincial jurisdictions, with a view to persuading the Federal Government to make the necessary legislative changes to maintain continuity of eligibility for Unemployment Insurance and Canada Pension Plan benefits for the claimant suffering lost time injuries.

4. INTEGRATION OF CANADA PENSION PLAN BENEFITS

The Committee heard numerous representations that Worker's Compensation benefits and Canada Pension Plan benefits should not be integrated and the Act should be changed to reflect this. The basic reasoning for such a change is that the worker pays into Canada Pension Plan and should receive his benefits. The employer pays into Workers' Compensation and it is therefore separate and apart from Canada Pension Plan.

After consideration the Committee finds that compensation levels, with integration of Canada Pension, fulfills the objective of adequately compensating injured workers for lost wages.

5. DEEMING

Since January 1, 1984, the Commission pays

compensation based on loss of earning capacity. Prior to this date compensation was based on physical loss or disability regardless of how the impairment affected the claimant's ability to perform in their occupations or the impact on their earnings. Under the new Earnings Loss Replacement system this inequitable situation has been resolved.

s.63(3) of the Act gives the Commission the authority to deem that a worker is capable of working in an occupation and to estimate the wage he could earn. We recognize that deeming is an essential component of Workers' Compensation since the return to the Earnings Loss Replacement system. It provides a means of establishing the proper amount of compensation due a claimant by comparing pre-injury earnings with income a recovered worker is capable of earning. We make the following recommendation.

Recommendation

14 That the Commission issue a written policy stating:

A. where deeming is used in setting benefit structures the following criteria must apply:

1. **The worker must be capable of performing the work.**
2. **The worker must be qualified for the work.**
3. **There must be reasonable opportunity to obtain the work. i.e. work of that nature exists. It does not necessarily mean that there is an actual job opening.**

B. That deeming should be only legitimate when the following circumstances exist:

1. **The worker has refused an actual job offer within his physical limitations. In this case the basis for deeming is obvious—the salary of the job which the worker has refused.**
2. **The worker has completed an appropriate rehabilitative training programme. In this case the basis for deeming would be the average starting salary of the position for which he was trained.**
3. **The worker has refused to take appropriate rehabilitation training. In this case, the basis for deeming would be the average starting salary of the position for which he would have been trained.**
4. **The worker has voluntarily retired from the labour force—either through the acceptance of early retirement or through staying home for personal reasons. This is the only situation where the exercise of some judgment is necessary for there may in fact not be an actual job which can be applied in deeming that individual.**

C. Where a claimant is not an appropriate candidate for rehabilitation then no deeming should be applied.

6. TRAVEL EXPENSES

Complaints were received during the hearings regarding amount allowed for claimants travel expenses. We compared rates of the commission with similar agencies. It is our view that the current policy of the commission is inadequate in two areas, namely: meal allowance and reimbursement for car mileage.

Recommendations

15 That meal allowances be increased from $4.00 to $5.00 for breakfast; from $6.00 to $7.00 for lunch and from $8.00 to $10.00 for dinner.

16 That Workers' Compensation Commission pay mileage at the rate of 20.5¢ per kilometer.

17 That these travel costs be reviewed on an annual basis.

7. EXPENSE ACCOUNTS

We received complaints that long delays were being experienced by claimants for reimbursement for expenses. This is causing financial inconvenience.

Recommendation

18 That payment of expenses be made by the Commission within two weeks of the receipt of same by the Commission.

8. COST OF LIVING INCREASES

The Committee has reviewed the legislation with regard to increases in compensation payable to both claimants and dependents. At present, increases cannot be made without amendment to the Legislation.

The Committee is of the opinion that all compensation benefits should be increased annually in line with the Average Industrial Aggregate Weekly Wage and further that all such future increases should rest with the Board of Directors and not the legislature.

Recommendations

19 That annual cost of living increases be made for disability benefits and such increases be in line with the increase in the Average Industrial Aggregate Weekly Wage.

20 That the Act be changed to allow the Board of Directors to make such annual increases.

9. CONTINUED MEDICAL COVERAGE FOR INJURED WORKER AND FAMILY

It appears to the Committee that a claimant's family and in some cases the injured worker, are losing benefits they would otherwise be entitled to, but for a work related injury. These are benefits derived from employer sponsored benefit plans.

It is the Committee's opinion that the claimant or his family should not be placed in this unfortunate position because they are receiving Workers' Compensation benefits. We believe these major benefit plans should be continued by the employer and employee following a work injury.

Recommendation

21 That Employers be required to continue major benefit plans for at least one year following a compensable injury to a worker. If the plans are cost-shared then the injured worker must continue payment of his share of the premiums for such coverage.

10. LUMP SUM TO SURVIVING DEPENDENT SPOUSE

The present Act allows for a lump sum benefit to be paid to the surviving dependent spouse of an amount equal to two and one-half times the deceased workers' annual compensable income. The Committee feels this lump sum benefit is inequitable. It does not look after the younger widow(er) of the wage earner who would have the greater need for such benefit.

There are significant differences in the amounts payable to different spouses, resulting in a death benefit from a minimum of $26,000.00 to a maximum of $76,420.00. This benefit is not intended to compensate for loss of earnings as loss of earnings is compensated for by a monthly payment to the dependent spouse. It is an additional benefit payable as a consequence of the death of an injured worker. It would be more appropriate if payment were tied to the Annual Industrial Aggregate Weekly Wage and the age of the dependent spouse, thus acknowledging that the younger the spouse the greater the need.

The average lump sum benefit paid during the years 1985 and 1986 was $42,200.00 which is 2-1/2 times $16,880.00-the Average Annual Compensable Earnings of deceased workers.

Our recommendation for a new death benefit structure is based on the Annual Industrial Aggregate Weekly Wage, which was $20,800.00 in Newfoundland in 1987, and the spouse's age at the time of the fatality, which would change the death benefit payable as follows:

Age	Benefit
65	39,000.00

60	41,600.00
40	52,000.00
30	57,200.00
20	62,400.00

*Benefit to be set at $52,000.00 at age 40 increasing or decreasing 1% per year for each year that spouse's age is under/over 40.

Recommendations

22 That the lump sum Death Benefit payable to a surviving spouse be changed and a new structure be implemented based on 2-1/2 times the Average Industrial Aggregate Weekly Wage and the spouse's age at the time of the fatality plus or minus 1% per year for each year under or over age 40.

23 That the surviving dependent spouse should have a choice of electing to receive the Death Benefit in a lump sum payment or as a monthly pension.

11. LUMP SUM TO SURVIVING DEPENDENT CHILDREN WHERE NO SURVIVING DEPENDENT SPOUSE.

Today, when one parent families are on the increase, should one parent die from a work related injury the surviving dependent children could receive benefits under the Act. Pursuant to s.58 should the Commission find it desirable to continue the existing household; and where a suitable person acts as foster parent in keeping up the household and maintaining and caring for the children, benefits paid would be the same monthly payments of compensation as would be payable if that person were the spouse of the deceased.

Further pursuant to s.60(1) where payments are made in respect of a child they shall cease at the age of 16 years. In the case of an invalid child, without regard to age, such payment may continue as long as the Commission is of the opinion it might reasonably have been expected that the worker, had he lived, would have continued to contribute to the support of that child.

Pursuant to Regulation 19(1)(g) the amount of compensation payable for each child is $117.60. However, should the deceased worker die leaving a dependent spouse, in addition to the monthly payments for the spouse and children, the spouse, pursuant to Regulation 19(1)(a) is entitled to a Death Benefit representing 2-1/2 times the deceased workers annual compensable income.

We believe that if dependent children are the sole dependent survivors, then the Death Benefit which otherwise would have been payable to the dependent surviving spouse should be payable to these children, in equal shares.

As these surviving dependent children will generally be under-age, their share cannot be paid to them until they reach the age of majority. This necessitates the appointment of a guardian who will administer the same for these children. Generally estates of this nature are handled by the Registrar of the Supreme Court.

Recommendation

24 That in addition to the payments received pursuant to s.s.53, 54 and 60 the Act be changed to provide a Death Benefit payable to surviving dependent children where they are the sole survivors of a deceased worker pursuant to the Act.

12. FUNERAL ALLOWANCE

From representations made during the Public Hearings it was evident the burial allowance is inadequate. s.53(1) of the Act provides for funeral expenses in accordance with the Regulations. Regulation 19(1)(h) states:

> in every case compensation shall include...the necessary burial expenses of the worker not exceeding $1,500.00 and, where the body of the worker is transported for a considerable distance for burial, the amount of compensation shall include a

further sum for necessary extra expenses.

The Committee reviewed this issue and determined the average cost of funerals today. We found that the cost of funerals has risen to an average somewhere between $2,500.00-$3,000.00 and that a benefit up to $3,000.00 is more in line with actual cost. This is particularly true where the only death benefit payable for a funeral comes from the Commission. In any event it is only the necessary burial expenses that the Commission compensates for. Our recommendation is made with the knowledge that there may be burial benefits available also from the Canada Pension Plan.

Recommendation

25 Regulation 19(1)(h) be amended by deleting the words "not exceeding $1,500.00" and replacing with the words "not exceeding $3,000.00". That this amendment be made effective January 1, 1989.

13. SURVIVING DEPENDENT SPOUSE'S MONTHLY ALLOWANCE

The Committee discussed the present scheme of spouses allowance and found it to be equitable. It should be kept in mind that the Committee is recommending that the Lump Sum Death benefit be increased to especially aid persons on the lower end of the economic scale. Further a recommendation that the burial allowance be increased is made by this Committee. However one area where the Committee sees a problem is in that the allowance paid on behalf of a child ceases at age 16. Children are usually now older than 16 when they complete high school, due to the introduction of Grade XII to the educational curriculum. We therefore make the following recommendation.

Recommendation

26 That in Section 60(1) of the Act and Regulations 19(1)(b) and (e) the age limit for dependent children be changed from "16" to "18" years.

14. ANNUITIES

Prior to 1984 permanent total and permanent partial disability benefits were payable for life. With the implementation of the Earnings Loss Replacement system of compensation in January of 1984, these benefits cease at age 65. To provide income after the age of 65, Section 63 of the Act requires that after compensation is paid for a period of 24 months the Commission set aside an amount equal to 10% of the compensation paid, which together with accrued interest is used to purchase an annuity for the injured worker.

We agree that replacement for lost retirement income is necessary in light of the Earnings Loss Replacement system now in effect. However, from information received it is evident that in some instances this annuity could result in inequitable compensation for some claimants.

An example of this would be a worker injured at age 23 who received compensation for 24 consecutive months and who subsequently returned to the workplace without further lost time. Assuming that his compensation benefits were based on compensable earnings of $20,000.00 per year this would produce $4,000.00 in his annuity account. Projecting this $4,000.00 to age 65, with an average compound interest of 10% would produce a sum of money sufficient to purchase a monthly pension of approximately $1,800.00.

Assuming, as we did, that this worker returned to work after a two year injury with no further lost time he has had 40 years in the workforce during which time he contributed, or had the potential to contribute to a pension plan to provide for his retirement and in addition Workers' Compensation has effectively financed his retirement. If this injured worker were age 53 at the time of injury he would receive an annuity of only about $100.00 per month. The Income Loss Replacement system of Compensation is not intended to create this kind of inequity.

Our investigation indicated that the Commission was not sufficiently aware of the full impact of this annuity. We also fear that

the cost of this annuity could reach unmanageable limits. We believe that an in-depth financial analysis should be conducted.

Recommendation

27 That the existing annuity plan be put on hold until a proper financial analysis is conducted to determine the full impact of the annuity fund on claimants and the injury fund and any inequities found be rectified.

15. CONVERSION OF PENSIONS TO EARNINGS LOSS REPLACEMENT

Pursuant to Regulation 27 of the Act as amended April 26, 1986 compensation benefits payable may be converted to benefits payable under Workers' Compensation Act, 1983. In part Regulation 27.1 states:

> (3) Pursuant to section 115 of the Act, where permanent disability benefits are being paid to a worker in respect to an injury which occurred prior to January 1, 1984, such benefits may, on or after January 1, 1986:
>
> (ii) where there is a demonstrated or deemed loss of earnings as a result of the injury, be integrated into loss of earnings benefits.

We understand this to mean that a person who was receiving a pension under the old Workers' Compensation Act now receives Extended Earnings Loss benefits. In addition he receives the annuity as provided by s.63 of the Act.

Again, as with the annuity, we feel that the financial ramifications of this change will be prohibitive. We fear this conversion was brought in without the necessary cost analysis. We believe that it is essential that a complete actuarial study be undertaken in conjunction with the financial analysis proposed for the annuity.

Recommendation

28 That a complete actuarial study be commenced immediately to determine the financial impact of conversion of old Act pensions to benefits payable under the new Earning Loss Replacement provisions of the Act. This study to be done in conjunction with the financial analysis we propose for the annuity.

Chapter

4

REHABILITATION

Along with past Review Committees, this Committee recognizes the importance of rehabilitation to the injured worker and his family. The Commission also recognizes this as is evident by the increase of the rehabilitation budget from $75,000.00 in 1968 to $2.6 million in 1986.

There are many factors which contribute to the success of a rehabilitation program. In our deliberations we looked at all aspects of rehabilitation, including the physical, emotional, social, financial and employment needs of the injured worker.

The twofold purpose of rehabilitation is medical and vocational rehabilitation, resulting in the workers return to the workplace with the least detrimental effect.

Rehabilitation is a right and every injured worker who has reached maximum medical recovery and continues to be disabled to the extent that he cannot return to his pre-injury job must be afforded the services of the Rehabilitation Department.

The Committee endorses the recommendations of the Institute of Social and Economic Research (ISER) report and we hope that the Commission gives careful consideration to recommendations in that report.

The following sets forth the major areas of concern considered by the Committee.

1. CLAIMANT'S ROLE IN CHOICE OF REHABILITATION SERVICES

Many claimants told us that injured workers are not given sufficient opportunity for input into the rehabilitation service offered them. This frequently leads to considerable frustration on the part of claimants.

One example which is representative of many we received is a complaint from a forty year old woodsman with grade six education. He was told to take a business education course and not carpentry, which he preferred. This claimant, despite reasonable effort, could not complete this course. He was told that if he did not complete this course his benefits would be cut off and they subsequently were.

Situations like this should not exist. If the claimants rehabilitation is to be successful he must have input into his own rehabilitation. He must be counselled in the setting and attaining of realistic personal goals.

Claimants very often experience trauma as a result of their injury. It is the role of the rehabilitation department to assist them in preparation for successful return to the workplace.

The claimant and the counsellor with the Employment Specialist should plan a realistic personal goal for the claimant and maintain the continuity of this consultation throughout the rehabilitation process.

Recommendation

29 That written procedures be put in place to provide for greater participation by the claimant in establishing his personal rehabilitation objectives.

2. COUNSELLOR TRAINING

Qualified counsellors are the key to successful rehabilitation. In order for counsellors to properly deal with the physical, social and psychological problems of claimants it is essential they receive the

necessary training to carry out these responsibilities. We feel this can only be accomplished with in-depth on-going specialized training.

Recommendation

30 That highly specialized on-going training be mandatory for counsellors to equip them to respond to the complex needs of claimants.

3. INCONSISTENCIES IN COUNSELLOR DECISIONS

s.76 of the Act, in broad terms only, sets forth the right of an injured worker to rehabilitation services.

In commenting on this issue the ISER report states:

> The task of determining specific rehabilitation needs and developing and implementing programmes, has been delegated to the Rehabilitation Department. The Department is, in effect, directly responsible for interpreting the legislative intent of the Act, and transforming that interpretation into realistic useful policies, procedures and programmes.

Under the Act counsellors have considerable discretionary authority in planning and implementing rehabilitation programmes. However we find there are no specific guidelines or policies in place for the consistent application of the intent of the Act.

As ISER states:

> such flexibility also presents the opportunity for the staff to bring their own 'agendas'—their own senses of how the rehabilitation mandate should be applied, and what the results should be—to their jobs.

The Committee found that individual counsellors tend to do what works best in their own judgment. As a result, some authorize benefits that others deny. Comments from counsellors were as follows:

> Not all Counsellors are doing the same things.
>
> They the counsellors have different senses of what's important. We all have our own opinions and share them...but we can all have different opinions in policy.
>
> We've been inconsistent in what we're doing.

The Committee received numerous complaints that preferential treatment was being given to some claimants. One man advised that his counsellor wanted to get him in retraining and out of his hair as fast as he could without waiting for tests to come back to see what type of job he would be better suited to. Another stated there should be standards or guidelines "so that one person is not given more than the other". Comments like, "the squeaky wheel gets the grease", to, "they promised me one thing and changed their minds", "I asked him to send me to school, he said 'no' ", were often heard.

The Committee is of the opinion, having read the ISER report and having listened to counsellors and claimants that because of the wide discretionary power given to counsellors, all claimants do not receive consistent treatment.

Recommendation

31 That written policies and guidelines be implemented for counsellors to ensure consistent application of rehabilitation services to claimants.

4. COUNSELLOR WORKLOAD

From our interviews with counsellors, at St. John's and the Branch Offices, the Committee found that because of the high caseloads counsellor morale is low and the level of frustration is high. This obviously affects the delivery of service to claimants. We feel that timely and proper delivery of rehabilitation services is vital to the success of returning injured workers to the workplace. With caseloads currently averaging 100 per

counsellor we believe that claimants cannot be given adequate personal attention. We found the average caseload in this Province to be approximately three times as high as in provinces such as Manitoba, Ontario and New Brunswick. Therefore early intervention, which is the key to rehabilitation success, cannot be achieved.

Recommendation

32 That within one year counsellor's caseload be reduced to fifty.

5. EARLY INTERVENTION

It should be noted that from 1982-84 a policy of automatic referral to rehabilitation at twelve weeks was adopted but proved burdensome and led to referrals of persons not requiring counselling assistance.

Recently the Commission has changed its policy and the claimant is now notified 2-3 weeks before cut off and the onus is placed on the claimant to contact the rehabilitation counsellor. Their reasoning is that due to counsellor's caseload, considerable time would pass before contact is made by the counsellors. This procedure does nothing to aid the claimant.

We believe early intervention and more personal contact between injured workers and the Commission would result in a more positive acceptance by claimants to the rehabilitation process.

Early intervention allows the counsellors to assess the needs of claimants so that rehabilitation can be planned and makes the injured worker more aware of the rehabilitation services available and thus be able to look ahead to the time when he will return to the workforce. It will also lessen the chances of the chronic pain syndrome.

At present it is virtually impossible to obtain early intervention due to heavy caseloads. Therefore counsellors cannot have a meaningful and productive relationship with claimants.

The ISER report states "...at year end over the past five years, approximately fifty percent of the total annual caseload remained unresolved...18 to 25% consistently involved those not yet contacted".

It is well known that the longer a person is away from work the harder it is to return. This is due to depression, loss of confidence and self-esteem, and in Workers' Compensation cases, dependence on income replacement and loss of work ethic.

Recommendation

33 That the Commission adopt a written policy whereby in the case of a seriously injured worker, the rehabilitation department is notified immediately and the counsellor makes personal contact with the claimant as soon as practicable. In other cases where the need for rehabilitation services is obvious, notification to the rehabilitation department should be made not later than 12 weeks from the commencement of the claim and personal contact made with the claimant.

6. COUNSELLOR FIELD VISITS

It is important that counsellors be more aware of claimants overall circumstances and needs and this can only be attained by personal contact. However, it appears to us that a lot of the counsellors work is strictly confined to administrative and clerical duties. Rehabilitation counsellors, due to large caseloads, cannot conduct the necessary field visitations.

As one Counsellor said: "...[the job] is lacking the counselling component...you are reacting". "Follow up in training programs is pretty much zilch".

The general consensus is that most communication is conducted on the telephone and face to face contact is at a minimum.

To ensure proper communications between the parties good face to face contact is essential. By visiting the claimant, the counsellor can be made aware of that claimant's needs and consequently how best to obtain the desired results from his personal rehabilitation programme.

Recommendation

34 That the Commission adopt a policy requiring a field visitation programme for counsellors with a monitoring system to ensure that visits occur on a regular basis.

7. MILLER CENTRE

An important part of the rehabilitation process is the service supplied by a rehabilitation facility. In the Province, the Commission uses the services of the Miller Centre in St. John's.

However, it is obvious that some claimants have a bad perception of the Miller Centre and some thought it to be a way to cut off benefits.

The Committee received many complaints and comments about the Centre such as:

> ...You gets treated like, not a second class but a third class citizen.
>
> ...a lot of it what you got to go through in the medical centre as far as I'm concerned it's embarrassing. You know, it's nothing to do with your injury.

We visited the Miller Centre and were pleased with the physical facility and the programmes outlined to us by the staff.

However, we can see why some claimants may have a poor perception of the Miller Centre. Firstly, most of the people who were admitted had been on compensation for a considerable time, with varying degrees of dissatisfaction with the whole system. Secondly, the notice given to claimants advising of their Miller Centre admission did little to allay their fears. It appeared that claimants were not clearly told what to expect at the Centre and consequently many of the procedures and questions did not make sense to them.

Recommendations

35 That the notice of admittance to claimants more clearly explain the rehabilitation services provided by the Miller Centre.

36 The Commission ensure that all claimants referred to the Miller Centre be counselled prior to entry as to the reasons for the assessment and what programmes they will be expected to participate in.

37 That Counsellors be more fully versed in the nature of programmes at the Miller Centre to enable them to better understand and help claimants overcome their natural fears when required to submit to assessment procedures.

38 That the Commission commence research within the next two years as to its long term needs for educational and medical facilities.

9. PERMANENT RELOCATION

It was brought to the attention of the Committee that relocation of injured workers is sometimes necessary. For example in areas such as Labrador, where the injured worker, after rehabilitation, cannot return to his former employment and consequently has to find employment elsewhere.

In order to provide the claimant with the best possible opportunity to obtain such employment, it is our view that reasonable permanent relocation costs be borne by the Commission.

Recommendation

39 That s.77 of the Act be changed by adding after "provide that worker with such Academic or Vocational training" the words "or permanent relocation benefits, if necessary".

9. CLAIMANTS HOME VISITS

Many injured workers have to travel to major centres for rehabilitation services, necessitating, in the case of vocational rehabilitation, considerable months away

from their families. It is important, in the Committee's view, for the psychological well being of claimants that they be entitled to visit home during the rehabilitative period. These trips would be co-ordinated by the Commission.

Recommendation

40 That s.76 of the Act be amended by adding as s.76(d), the following:

> **to assist in the rehabilitation of an injured worker by providing periodic trips home, as in the sole discretion of the Commission it seems advisable, to a person who has, because of training or retraining, to leave his home for a course of education or employment.**

10. COUNSELLING SERVICES TO SURVIVING DEPENDENT SPOUSE

s.76 of the Workers' Compensation Act provides for rehabilitation services to injured workers only. While a surviving dependent spouse receives benefits pursuant to s.53 these benefits do not include rehabilitation services.

Representation was made to the Committee that rehabilitation services should be made available to a surviving dependent spouse to prepare that spouse to become more self-sufficient.

We recognize the loss of a spouse, through accidental death, is a traumatic experience and a surviving dependent spouse may, in addition to psychological counselling, require advice in other areas such as financial planning and job entry, etc. Such services, we believe, should be made available when and if the surviving dependent spouse requires them. We also believe that on the death of an injured worker early contact should be made with the surviving dependent spouse to advise him of the availability of these services.

Recommendation

41 That s.76 of the Act be changed by adding after s.76(c) the word "or" and adding as 76(d) the following:

> **to assist a surviving dependent spouse by providing counselling services, if required.**

11. EMPLOYMENT SERVICES

As stated in the ISER report "Re-employment with the accident employer is the first rehabilitation option pursued. If work is not available to the injured worker the worker is obliged to begin looking for work". ISER further states:

> ...in most cases it is a mandatory first step for client's (unless the counsellor decides some other course of action such as skills assessment is warranted).

During our hearings we heard many complaints from claimants regarding the Commission's Job Search Programme. The general feeling of those appearing before us was that for the most part it served no useful purpose. At best it provided a means for continuing benefits a little longer and at worst an embarrassing and depressing experience.

The following is a sampling of the many complaints we received from claimants:

> ...I think that they shouldn't pressure a person into doing what they don't want to do. e.g. doing a job search for 6 weeks when you don't have any Training for the jobs. It's humilitating.

> ...The job search was embarrassing. Like I was begging someone to feel sorry for me and give me a job.

The ultimate goal of rehabilitation is to have the worker return to the workplace. This objective is particularly important now that the Province has introduced the Earnings Loss Replacement Programme. This is borne out in the ISER report:

> ...Earnings replacement compensates for reduced earnings capacity due to occupational injury by providing income supplements to those whose post-injury earnings capacity is less than their pre-injury earnings capacity. No compensation is provided where no reduction of earnings capacity occurs.
>
> ...[Cost] effective earnings replacement is linked to successful rehabilitation of workers in that high income post-injury employment is expected to reduce the future demand for earning supplements.

It is important that the Commission make all reasonable efforts to help injured workers obtain gainful employment.

Presently the onus of looking for a job is on the injured worker. Often they spend time looking for jobs for which they are not qualified or where no work is available. Some workers have no idea what skills are needed for a particular job; how to look for a job; what is available; where to go; or how to present themselves. This can be a frightening experience to someone who has worked all his life and now, because of a work related injury, finds himself in the unfamiliar position of searching for a job.

Although most injured workers return to the original employer, some cannot. For example, the company no longer exists; the worker may not be physically able to return to the pre-injury employer; or job site modification may not be practicable.

We understand that injured workers have additional problems competing in a very restricted job market. It is not enough to leave claimants to their own resources. Statistics indicate that 59% of job search clients are unemployed. This, we feel, is unacceptable. The Commission should aid these injured workers in finding a job.

To accomplish this the Committee is recommending that the Commission identify a new position, an Employment Officer who, among other things, will:

- —Identify job market trends
- —locate job vacancies and match claimant's skills to employment positions available
- —communicate with employers regarding the benefits of hiring rehabilitated injured workers
- —work with counsellors and injured workers during rehabilitation
- —set up modified work programmes
- —advise the worker on how to obtain a job
- —promote the rehabilitation objectives of the Commission and liaise with other job placement groups.

Recommendation

42 That the Commission provide for an Employment Specialist so that every effort is made to return injured workers to the workplace. The Employment Specialist's duties should be set out in accordance with those outlined above.

Chapter

5

INDUSTRIAL DISEASE

1. LATENCY PERIODS

This Committee recognizes that there can be lengthy latency periods between exposure and diagnosis of certain Industrial Diseases. In the case of asbestosis for example, diagnosis could be as long as thirty-five years after exposure. Nevertheless the presumption clause s.78(3) applies only if a worker

> ...at or immediately before the date of the disablement was employed in any process prescribed and the disease contracted is the prescribed disease associated with the description of the process, the disease shall be deemed to have been due to the nature of that employment unless the contrary is proved.

It is possible that a person can be diagnosed to have an Industrial Disease long after leaving employment in a hazardous industry and thus not be eligible to receive benefits commensurate with those he would receive if the diagnosis could be immediate. We believe this to be unfair to such a person or his dependents. With this in mind we make the following recommendation.

Recommendation

43 That s.78 of the Act be amended by adding immediately after paragraph (6), the following:

(7) Where a worker is no longer engaged in the trade, occupation or profession to which the disease is due, the Commission shall pay compensation to the said injured worker or his dependent based on an amount not exceeding the Annual Industrial Aggregate Weekly Wage subject however to sub-sections 8, 9 and 10 hereof.

(8) In no case shall compensation payable pursuant to Section (7) hereof be paid if the worker was at the time of diagnosis over the age of 75 years.

(9) A worker referred to in (7) hereof is presumed to have contracted a disease if he was employed in any process prescribed and the disease contracted is the prescribed disease associated with the description of the process.

(10) neither a worker nor a dependent is entitled to compensation pursuant to paragraph (7) unless the worker:

- **a) has been a resident of the Province for a period of at least three years last preceding his diagnosis, or, at least 2/3 of his exposure was in the Province;**
- **b) was free from such occupational disease before being first exposed to same in this Province;**
- **c) has been a worker for a period or periods aggregating three years preceding his diagnosis, or for a lesser period if the worker was not so exposed anywhere except in this Province.**

2. LOSS OF HEARING

We recognize that noise in the workplace sometimes causes hearing loss. During our hearings we were told that the minimum level of exposure of 90db(A) in the Act should be changed to 85db(A) and claims should be allowed if a worker was exposed to this level of noise for a period in excess of 16 months.

Upon review of the policy of the Commission in this regard we found that the Commission

now recognizes a minimum level of 85db(A) after 15 months exposure as the threshold although the present written policy of the Commission states 90db(A).

Recommendation

44 That the Commission change its written policy on Hearing Loss to read 85db(A) as the minimum acceptable exposure and that claims be allowed for 15 months exposure to noise at that level.

3. ST. LAWRENCE

Because of the unique problems in the area, the Committee included the Town of St. Lawrence in its' schedule of Public Hearings. An additional day was allotted to ensure that all persons desirous of appearing would have the opportunity to do so.

Having listened to presentations by the Town Council of St. Lawrence, the Town Council of Lawn, an Association of Widows and numerous individual widows, workers and family members, the Committee was convinced of the catastrophic effects of unchecked industrial disease on this community. The problems in St. Lawrence lie primarily in the percentage of widows affected, in relation to population, and hence the disastrous effect on those family units and the community. This is a direct result of lateness in diagnosing and accepting the long term effects of fluorspar mining.

The problem exists today, as it did when the last Review Committee visited St. Lawrence in 1981, and every Review Committee before it. On the basis of the 1966 Review a Royal Commission was appointed, in 1967, to investigate the problems in St. Lawrence and make recommendations for their resolution. This led to the inclusion of St. Lawrence in the Workers' Compensation Act in a special section (s.79) in 1972. It was also instrumental in establishing a fund to provide benefits, in addition to Workers' Compensation, to widows and children of deceased mine workers in the area. The Province and the previous mine owners were the contributors to this fund and it is the depletion of these benefits, through inflation, that is further contributing to the problems identified in St. Lawrence.

This Committee recognizes the unique problems of St. Lawrence but we feel that the solution does not rest entirely with the Workers' Compensation Commission. Benefits being paid by the Commission are the maximum that the Act permits. To allow increased benefits for one community would be a disservice to workers in other parts of the Province and set a precedent that would have far reaching effects on Workers' Compensation in Newfoundland and Labrador.

Nevertheless, we recognize that there are special problems in this area that need to be addressed; for example, a widow in St. Lawrence whose husband was a miner was receiving Workers' Compensation benefits based on wages of $5.00 per hour. At the time of his cancer diagnosis he was employed on a Make Work Programme sponsored by Manpower that paid only $5.00 per hour.

For these reasons this Committee makes the following recommendation.

Recommendation

45 That the Government of Newfoundland conduct a case by case review of the current situation of the widows of St. Lawrence miners with the view to having the appropriate agency take the necessary action to address any special needs that exist.

A. s.79—SHOULD IT BE REMOVED FROM THE ACT?

The Committee is of the opinion that s.79 is now redundant and creates a problem for other mining industry workers in the Province. St. Lawrence was a special case. Industrial disease is now adequately covered by s.78 of the Legislation and to leave s.79 in the Act is discriminatory against other workers in the same class. It serves no further purpose. The presumption in s.78(3) is adequate protection to those yet to be diagnosed and our recommendation, if accepted, with regard to a person who no longer works in his trade, occupation or profession will fill any gaps in the Legislation.

Recommendation

46 That Section 79 be removed from the Act.

Chapter

6 MEDICAL ISSUES

1. WHO DECIDES ON FITNESS FOR WORK- FAMILY DOCTOR v. SPECIALIST

From statements made by claimants at our public hearings we found that most injured workers have the common perception that the Commission's doctors are only there to ensure that a person "gets off" compensation rather than to deal with injured workers' needs. The reasoning was that even though the family doctor does not give a clearance for return to work or he advises a claimant he is 100% disabled the Commission does not accept the opinion of the family doctor.

There were also complaints that neither the specialist nor the Commission doctor gives claimants adequate time nor do they know the background of the patient well enough to make a proper assessment. This is not so with the family doctor.

We received complaints that waiting periods on referral to specialists from the family doctor are extremely long during which period no active treatment is being given and consequently no compensation is being received. This causes considerable frustration and inconvenience to injured workers. When the family doctor feels there is disablement but a specialist says there is nothing further to be done leads to compensation not being paid as no "active treatment is being given". Yet the family doctor advises the worker he is disabled and cannot work.

The Committee was asked to recommend that the family doctor have the right to decide on fitness for work. It was further recommended that a neutral assessment by doctors outside the Province should be available to an injured worker.

The Committee has reviewed these requests and finds that the Commission, in making a decision, takes into consideration not only specialists' reports, but family doctors' reports and reports of a neutral panel (i.e. Miller Centre) before a worker's benefits are "cut off".

We also point out that should an injured worker be dissatisfied with the Commission's decision, with regard to his claim, other avenues are available, i.e. the internal review process and the Appeal Tribunal.

Recommendation

47 That the Commission ensure that there is closer liaison between the Commission and the family doctor; that liaison be established with the Newfoundland Medical Association to make doctors more aware, by way of workshops, seminars, etc., of the Workers' Compensation system so that unnecessary delays and interruptions of benefits are minimized.

2. MEDICAL AID— PHARMACEUTICAL SERVICES

The Newfoundland Pharmaceutical Association advised us that pharmacists have sought to have a formal agreement put in place with the Commission covering policies on payment to pharmacists for services rendered.

We have been advised that pharmacists are reluctant to accept perscriptions from claimants that are to be paid by the Commission. This is due mainly to long delays in receiving reimbursement from the Commission and the fact that pharmacists have no way of knowing what claims are legitimate and what claims are not.

We recognize that the absence of a formal arrangement with the Commission does create problems. However we would point out that when the Commission's "Memorandum to Pharmacist" Claim Form is presented to the Commission they will pay the first bill even if it has not been established there is a claim.

The Association further requested that a part-time pharmacist be hired to screen the bills submitted to the Commission to ensure that it is not paying bills that should be denied. In our opinion this is not necessary.

In the best interests of the worker, the Commission and the pharmacist, the Committee finds that formal arrangements should be entered into by the Commission and the Pharmaceutical Association.

Recommendation

48 That the Commission enter into a formal arrangement with the Pharmaceutical Association covering the following:

- **—The criteria to establish eligibility.**
- **—An approved benefit list.**
- **—Schedule of prices to be charged for pharmaceutical services.**
- **—Payment of claims process.**
- **—Approved forms for billing claims.**

3. DISABILITY RATING SCHEDULES

The Committee discussed the method of rating disabilities with the Medical Department of the Commission and found that it uses a schedule known as "Functional Impairment Rating Schedule". When a finer assessment is needed they also use the "American Medical Association Guides". These guides are important when a difficult case arises however it is not adequately covered by the Commission's present written policy.

The Committee supports the present policy of the Commission in using the American Medical Association Guides whenever deemed necessary by the Medical Department.

Recommendation

49 That the Commission continue to use the Functional Impairment Rating Schedule and, when deemed necessary by the Medical Department, also use the American Medical Association Guides for Rating Impairment.

4. PERMANENT FUNCTIONAL IMPAIRMENT AWARDS—WHO DECIDES?

It has come to the attention of the Committee that problems have arisen with respect to changes made to percent of disability assessed on an injured worker. The Medical Departments' decision has sometimes been altered and substituted with the adjudicator's own decision, leading on occasion, to a decrease in the percentage of disability awarded a claimant thus affecting the Permanent Functional Impairment Award. Although the Medical Department's rating is generally followed the Committee feels that the final decision should rest always with the Medical Department—not the Claims Department. The knowledge and expertise to make such a decision is within the Medical Department.

Recommendation

50 That decisions of the Medical Department with regard to percentage of disability be binding on the Claims Department.

5. ADVICE TO CLAIMANT REGARDING TREATMENT/SURGERY

Evidence given at the public hearings clearly shows that claimants believe benefits are cut off because they are not on "active medical treatment" or "refuse surgery"—thus the perception is that to obtain compensation benefits an injured worker must not for any reason refuse medical treatment or surgery no matter what the consequences.

The Commission advises us that continuity of

benefits is a policy. The acceptance or rejection of treatment and/or surgery is not the determining factor for continuity of benefits. However, to allay the fears of the claimant, it is this Committee's opinion that the claimant should be advised properly with regard to the proposed medical treatment and/or surgery before submission and should be advised that refusal will not lead to automatic benefit cut off.

Recommendation

51 That the Commission adopt a written policy that claimants be advised that the acceptance or rejection of medical/surgical treatment is not the determining factor in relation to continuity of benefits.

6. CHRONIC PAIN

By virtue of Commission Policy 96-09 the Commission compensates for psychological conditions. This is a good policy. It recognizes psychological problems which develop following, or are aggravated by, a physical injury and psychological problems interfering with a worker's rehabilitation and a pre-existing psychological impairment.

Chronic pain is a psychological problem which can arise subsequent to an injury and representation was made to this Committee that chronic pain be compensable. We found that present policy is broad enough to compensate for chronic pain.

Chronic pain, to be compensated, must be disabling, therefore it must impair earning capacity. It is pain that persists past the normal time of healing.

There appears to be two concepts of chronic pain—Enigmatic Chronic Pain and Chronic Pain Magnification. Enigmatic Chronic pain can be said to be genuine pain for which there is no known organic reasoning and pain that is solely the product of a worker's own psychological processes, or it may be a combination of the two. Chronic Pain Magnification is genuine pain associated with a known, permanent organic lesion.

The intensity of pain is determined by the brain being of mixed neurological and psychological nature. Anxiety has a major role in influencing how pain is experienced. Therefore it varies from person to person. Reaction to pain has a volitional element and a non-volitional element. Non-volitional reflects a person's innate pain tolerance while volitional is influenced by motivation.

The development of this disorder arises from psychosocial stress influenced, it is believed, by "secondary gain factors". These provide the worker with motivation for exaggerating a disability.

The Ontario Appeal Tribunal has stated that the following secondary gain factors may arise:

i) the invalid role subconsciously satisfies a worker's inner psychological need;
ii) the worker subconsciously recognizing the pain disorder and the prospect of compensation as a means of escape from an unpleasant or threatening job situation (particularly thought to be true of older workers), and
iii) the worker's family's close support reinforcing the pain behaviour and thus the pain.

The main predisposing factor is psychosocial stress. Thus, it is said, a worker could profit by his disability.

The Compensation system is particularly interested in "secondary gain" factors. They present a difficult barrier to overcome. The average person would see it as motivating a dishonest attempt to obtain compensation. In genuine cases, secondary gain factors are deemed to be unconscious and do not affect the non-volitional nature of the worker's pain experience. Nevertheless, chronic pain disorders do exist. We believe, that although there may be cases of chronic pain which are not legitimate the majority of cases are real.

The etiology for the condition can be determined—whether or not the pain is real to the injured worker.

The Committee is of the opinion that such pain should be compensable.

Where chronic pain arises after an injury and

where it cannot be proven that there is another cause, not related to the compensable injury, which led to the development of chronic pain syndrome, responsibility of the Commission should be continued.

Policy 86-09 of the Commission, in part, states:

> B) After reaching maximum recovery from the physical injury:
>
> 3) In general, psychological psychiatric care on this basis will be limited to a period of six months.

We believe that in cases of true chronic pain, this policy is too restrictive and for cases where the chronic pain arose out of and in the course of employment the Commission continues to be responsible for continuing benefits. We further believe that the Commission should provide claimants with assistance to enable them to eliminate, reduce, or live with chronic pain.

Recommendations

52 That policy 86-09 of the Commission be changed to provide that true cases of chronic pain be adjudicated as other claims for which compensation is awarded. Where chronic pain results from an injury which "arose out of and in the course of employment" then the Commission remain responsible for continuing benefits. If the chronic pain is a pre-existing condition it is to be handled as would any other pre-existing condition.

53 That injured workers experiencing chronic pain syndrome receive the necessary assistance to enable them to eliminate, reduce, or cope with chronic pain.

7. MODIFIED WORK PROGRAMMES

This Committee was asked to give an interpretation of "light duty". However we are of the opinion that there can be no clear or acceptable definition of the term. We do realize that the use of the term "light duty" results in considerable confusion particularly on the part of claimants and employers especially when a doctor gives a claimant a clearance for work stating that he can do only light duty without attempting to describe the degree or nature of such light duty.

One claimant put it this way:

> ...I got this note from the doctor saying I was cleared for light duty work. I went back to the doctor and asked what light duty was. He said, I can't classify light duty work...I said why...He said, well, if I classify light duty work as this, that or the other thing, and you works at it and gets hurt I'm liable for suit.

Often upon receipt of a "light duty" clearance an employer will respond that he has no light duty to offer the worker.

Another claimant reported:

> Our employer says there is no such thing light duty. This only applies to compensable cases while some non-compensable cases are accepted and allowed on the job site.

In such situations the injured worker is often left in a Catch 22 situation.

It is essential that all concerned endeavour to have an injured worker return to the workplace as soon as possible following an injury. In many cases this will eliminate the onset of chronic pain syndrome.

Claimants complained that the Commission has used light duty as a means to cut off benefits leaving the claimant without the opportunity to return to his old job and to be without income.

We believe that the implementation of a modified work programme would overcome many of the "light duty" problems and result in the early return of many more injured workers to gainful employment.

Under a modified work program the necessary adjustments are made at the injured worker's worksite to accommodate the

measure of temporary incapacitation of the worker. This may include temporary adjustment or reassignment of duties; modification of the physical layout at the work centre; alteration or adjustment of hours of work etc. These and any other adjustments can do much in aiding the workers rehabilitation and transition from being physically prohibited from doing 100% of his pre-accident duties to ultimate return to full duties.

Under a modified work programme the employees wages are cost shared on an agreed basis between the employer and the Commission for the full term of the programme.

An effective modified work programme offers advantages to both the worker and his employer.

For the worker it means early return to work thus promoting self-confidence and eliminating the onset of chronic pain.

For the employer it often means the early return of a valued worker and as well reduces the employers overall lost time accident cost and thus potentially giving him a better merit rating.

We recognize that modified work programmes are temporary in nature and will be successful only if doctors, workers, employers and the Commission work together for the implementation of such programmes in the best interest of workers.

We also realize that not all employers will find it possible to participate in such programmes because of the particular nature of their work therefore all programmes must be voluntary.

Nevertheless we believe that overall the potential of such programmes is very positive thus our recommendations.

Recommendations

54 That the Act be amended to provide for Modified Work Programmes.

55 That each programme have the consensus of the attending physician, the Commission, the employer and the worker.

56 That a modified work programme be offered to an injured worker if the attending physician believes:

- **—the worker is reasonably fit to perform the work;**
- **—the work, despite the worker's injury, does not endanger his health, safety or physical well being;**
- **—the work is beneficial to the worker's rehabilitation.**

57 That all modified work programmes be monitored by the Commission.

58 That the employees remuneration be agreed between the Commission and the employer and the difference between this and the pre-injury rate be paid by the Commission.

8. MILLER CENTRE ADMISSION

The Miller Centre in St. John's is used by the Commission as a work skills assessment centre and for medical assessment of claimants.

Claimants using the centre for work skills assessment are referred by the Rehabilitation Department. The courses offered are basic literacy courses for persons with Grade V or under. This helps the Counsellor in assessing a programme of rehabilitation for the claimant.

The need often arises for a medical assessment especially where a claimant has seen different doctors who gave different medical opinions. The approach used at the Miller Centre is a multi-disciplinary approach—that is to obtain a consensus of opinion from various specialists who are dealing "at arm's length" with the claimant and the Commission. This approach is one that is favoured by this Committee.

The area of major concern is the time of referral for admittance for medical assessment. This usually occurs after a claimant is cut off from benefits. Admittance to the Miller Centre often comes so late in many instances that in some cases the

chronic pain syndrome has already set in.

Statistics provided by the Commission show some improvement in the time frames for admittance to the Miller Centre.

1987 saw an improvement in the time for admission and referrals from approximately 8 months to 5-1/2 months. We believe that 5-1/2 months after an injury is too long to wait for an assessment. The frustration and anxiety that goes along with an injury has by that time become established in the claimant's mind.

We suggest admittance to the Miller Centre be within three months from the date of the claim for claimants whose recovery is not progressing at a normal rate. This minimizes the possibility of the onset of chronic pain and helps the injured worker to return to the workplace.

Recommendations

59 That every effort be made by the Medical Department of the Commission to ensure that injured workers who are not progressing at the desired rate of recovery be admitted to the Miller Centre for medical assessment within three months from the commencement of their claim.

60 That in no event should an injured worker have to wait more than six months after injury for admittance to the Miller Centre except for extenuating circumstances.

9. CHIROPRACTIC SERVICES

s.72(1) of the Act states:

> The Commission shall provide a worker who is entitled to compensation under this Act or who would have been so entitled had he been disabled longer than the day of the injury with such medical aid as in the opinion of the Commission may be necessary as a result of the injury.

s.72(3) lists the areas of coverage but does not include chiropractic services.

Newfoundland is the only Province which does not cover chiropractic services. The Chiropractic Association of Newfoundland has asked the Committee to recommend the coverage of these services. They claim that studies have shown chiropractic to be a more cost effective treatment in some cases.

Manipulation as practiced by chiropractors appears to be all but forgotten. Chiropractic involves the treating of the whole body although in a majority of cases these services are given for back related problems.

Paul Weiler in his report, 'Reshaping Workers' Compensation for Ontario stated: "the back injury is one of the most vexing problems that the Commission had to encounter". He stated it accounted for fully 25% of the compensation claims in Ontario. In Newfoundland also, for the years 1980 to 1986, back injuries accounted for 25% of all compensable injuries.

The Committee recognizes the value of chiropractic services in its non-surgical, non-pharmaceutical holistic approach to health care, for the alleviation of suffering by injured workers. We believe it may generate a desire to get well and avoid the onset of the chronic pain syndrome.

Recommendation

61 That chiropractic services be recognized by the Commission on referral only by the Medical Department.

10. CARDIOVASCULAR EVENTS AT THE WORKPLACE

Request was made to this Committee that cardiovascular events at the workplace should be compensable regardless of whether or not the workplace was a contributing factor.

The Committee believes that to be compensable a cardiovascular event must be related to the workplace. The present policy of the Commission is to compensate for work related injuries when a cause or relationship is shown between the cardiac condition and an accident at work or a cardiac condition is

established as a disablement arising out of and in the course of employment.

Having reviewed the Commission's policy and in consideration of the benefit of doubt already in the Act we find that it needs no improvement.

Recommendation

62 That the Commission continue its present policy 81-06 as it relates to cardiovascular events.

11. BACK INJURY CLAIMS

The annual reports of the Commission show that for the period 1980-86, 25% of all compensable claims were back related injuries. This is alarming.

Total Year	Compensable Claims	Number of Back Injuries	% of Back Injuries
1980	5997	1382	23.04
1981	6551	1529	23.34
1982	8129	2034	25.02
1983	7982	2094	26.23
1984	8701	2407	27.66
1985	8636	2087	24.17
1986	8524	2213	25.96

The problem is so alarming that of necessity, prevention techniques must be implemented in the workplace by identifying high risk areas and putting in place accident prevention programmes for the benefit of the workers and employers.

Programmes should be implemented whereby workers are taught how to prevent back injury and employers shown how to recognize and correct safety deficiencies in the workplace. By educating the worker he comes to appreciate the unique problems with the back and his responsibility for his own well-being.

Back pain is sometimes recurrent and disabling and no known medical cure for low back pain problems exist. Because of this each case must be referred to the Rehabilitation Department so that the injured worker may be made aware of the potential seriousness of his problem and the lifestyle practices necessary for management of his pain and his return to the workplace. The ideal situation is that employers, as well as employees, are knowledgeable about back related problems and have up to date information made available to them for prevention of back injuries. This however must not be seen by the Commission as justification for cessation of benefits.

The Commission, the injured worker, the employer and the Occupational Health & Safety Division all must play an active role if this major problem is to be controlled.

Recommendation

63 That the Commission in conjunction with the Occupational Health & Safety Division make extensive use of seminars, workshops and other educational programmes for employers, workers, counsellors and doctors in the prevention and treatment of back injuries.

Chapter

7 ADMINISTRATION AND OPERATIONS OF THE WORKERS' COMPENSATION COMMISSION

In our hearings we received complaints from both labour and management representatives concerning the administration and operations of the Commission.

1. BOARD OF DIRECTORS

A Board of Directors has recently been appointed to administer the Act in accordance with Section 4 thereof, which states in part:

> 4.(1) There shall be a Board of Directors responsible for the administration of this Act, which shall consist of not less than seven nor more than eleven members appointed by the Lieutenant-Governor in Council, one of whom shall be appointed Chairman and one of whom shall be appointed Vice-Chairman.
>
> (2) All members of the Board of Directors shall be appointed from representations of workers, employers and the public so long as the number of representatives of workers is equal to the number of representatives of employers.

Feedback from both Labour and Management shows overall support for the concept of a Board of Directors. The Committee also supports this concept. However, we received considerable criticism in relation to the make up of the Board. It is felt by all concerned that it is not appropriate to have members of the public on the Board because the public as a whole does not have a vested interest. In our opinion only representatives of the major stakeholders, namely the employer and the employee, should constitute the Board membership. The composition of the Board should be three representatives from Labour, three from Management and an independent Chairman. It is also strongly suggested that future appointments to the Board of Directors should be made in consultation with Labour and Employer groups.

Recommendations

64 That the Act be changed to eliminate representation on the Board of Directors by members of the public.

65 That the Act be changed to state the number of Directors on the Board to be seven made up of three representatives of workers, three representatives of employers and an independent chairman.

66 That all appointments to the Board of Directors be made in consultation with labour and employer organizations.

2. CORPORATE MANAGEMENT ORGANIZATIONAL STRUCTURE

The Touche Ross Management Report indicated that although the structure and the senior management resources necessary to direct the affairs of the Commission are essentially in place,

> ...there is little evidence to indicate that significant operational and administrative priorities are dealt with, that financial results are challenged and monitored and that overall strategic direction issues are addressed.

It recommended a revised Senior Management structure. This included the creation of a new position—that of Executive Director-Programme Services, thus bringing the number of Executive Directors to three. To date the Chief Executive Officer is acting as Executive Director of Compensation Services (the Commission's name for Programme Services). The Chief Executive Officer will continue to hold this position, in addition to his own duties and the Commission will make a review to determine whether this new structure is needed.

The Committee recommends that this new position be created to more adequately complete the corporate structure of the Commission.

Another area of concern to your Committee and Touche Ross is the lack of strategic planning. They state:

> ...we saw little evidence that efforts were being made to develop strategic plans for the organization. No overall plan...was available.

Strategic planning is absolutely necessary if:

> ...the Commission is to be seen, both internally and externally, as having effective control over its direction and development.

The Commission advises that the strategic planning process is still in its embryonic stage but considerable work has been done to identify specific objectives for each of the Managers and Executive Directors. Objectives for both the short and the long term will be developed and will eventually be brought together into an overall comprehensive planning system.

The Committee urges the Commission to continue with the overall strategic planning process.

Recommendations

67 That the organizational structure recommended by Touche Ross be completed by the Commission as soon as practicable by the addition of an Executive Director, Programme Services.

68 That a comprehensive Strategic Corporate Plan be implemented as soon as possible to ensure proper management of the Commission's development and resources.

3. POLICIES AND PROCEDURES

The Commission is now a $45 million dollar a year operation and general administrative practices must be developed to rid the system of any inconsistencies which affect its employees, claimants and employers.

From the Committee's review of the Commission's present policies we find that they were developed in reaction to specific needs and not as a planned program to provide a framework and guidelines for employees to follow in the conduct of their activities. These findings by the Committee are confirmed by Touche Ross. They say:

> The Commission has no clear, coherent framework for its administrative policies and procedures. While we acknowledge that a variety of administrative policies and practices exist, and that recently many have been refined and updated, no logical structure exists that clearly sets out all the Commissions administrative and operating policies and procedures.
>
> ...there is no consistency to the content of the administrative policies and procedures...

We suggest that the Commission develop a process for the approval, updating and standardization of all policies. A policy and procedure manual including all policies must be made available to employees and worker organizations. The manual must be prepared in such a format as to ensure ease of use and all staff must be fully versed in the proper interpretation of these policies.

The Committee also suggests that the policies and procedures should be an integral part of an internal audit programme to ensure that they are consistently administered.

Recommendations

69 That more consistent general administrative policies and procedures be developed by the Commission and that a process be developed for approval of policies and procedures.

70 That a policy and procedure manual must be prepared in a format to ensure ease of use.

71 That the Commission ensure that all management and staff are well versed on the intent and application of all policies.

4. HUMAN RESOURCE DEVELOPMENT

We find that the Commission is making an effort to respond to its changing human resource requirements. While employees may feel threatened by the introduction of a more formal and professional approach to handling resource management we do agree with Touche Ross in that the necessary guidance and education to ensure acceptance of this process is needed to reduce the fears of employees. Employee motivation must be kept high to ensure maximum benefits to the Commission.

The introduction of the performance appraisal system is an important tool and must be fully understood by all employees. Job description must be written so as to reflect the needs of the Commission and the duties of the employees. The Commission must also be able to plan its human resource needs in a timely and effective manner so that reactionary manpower planning is minimized.

We see a need for a structured training programme for Commission employees in areas most beneficial. While the Commission's Policy 82-15 provides for development and growth through advanced training we find much of this is done on an ad hoc basis. For example, key employees such as adjudicators and counsellors should be extensively trained to adequately meet the needs of claimants.

The need for training was evident from the public hearings and the ISER report.

Recommendations

72 That a formal training programme be developed and implemented for Commission employees.

73 That within the next twelve months highly professional staff, such as adjudicators and counsellors, receive ongoing specialized training in their fields to more adequately serve the needs of injured workers.

5. FIELD AUDITORS

The original purpose for field auditors was to ensure that payroll records of all registered employers were examined at least once every two years. However the Committee finds that this is not being done. In recent years the focus of the field auditor has changed to one of a collection officer. This was in response to a large number of delinquent accounts.

The Touche Ross report states:

> A targeted approach is being used to direct audits to address employers with outstanding assessments and to stress collection of receivables as a priority.

We feel that the field auditor position must revert to its proper role and collections should be left to the new collections group set up by the Commission.

Recommendation

74 That the Commission develop a field audit policy and strategy that provides for the proper monitoring and regular auditing of all employers.

6. INVESTIGATIONS

The investigative role of the Commission is essential to ensure that abuses of the system are minimized. Prior to 1985 the Commission

employed investigators to carry out the investigative mandate of the Commission however these positions have now been eliminated and these responsibilities are being handled by the adjudicators. Touche Ross reports that their examination showed that only twelve investigations were made since this responsibility has been handled by adjudicators. They say:

> There is reluctance on the part of adjudicators to take on investigations in addition to an already heavy workload.

Reports received during our public hearings indicate that investigations, when done, are done in a "snoopy", "clandestine" manner and are most distasteful and ineffective.

The Committee is of the opinion that proper investigations are necessary to avoid abuse of the system by the employer and the worker and therefore must be done on a regular basis in a professional and visible manner.

We feel it is not the adjudicator's role to perform investigations. We suggest one person be designated as an investigator.

Recommendation

75 That the role of investigator be re-established by the Commission and that a qualified claims investigator be added.

7. SYSTEMS DEVELOPMENT—COMPUTERIZATION

The Commission has a computer system in place managed by its Information Services Department. Systems development has been ongoing and system upgrades have taken place. Increase in systems capacity has been made on a reactive basis only. This makes it difficult for the information systems function to ensure organized development.

Touche Ross stated that there were insufficient resources in the department to respond to ongoing development needs, i.e. upgrading present systems, developing new systems in areas such as merit-demerit and earnings loss replacement. In this respect we feel there is a need for an additional systems analyst.

We agree with the Touche Ross report when it says:

> Regular review of major systems is an integral part of an effective systems management process. Failure to undertake such reviews leaves the Commission open to the risk of having systems which are unable to address key user needs and which may become, at worst, redundant in certain key areas.

All policy or legislative changes that have an impact on systems should be communicated as soon as possible to the Information Systems Department to ensure that user needs are met. Failure to do so will affect the efficiency and accuracy of processing and reporting.

We find that supervisors do not know the full capabilities of the system and they cannot therefore adequately address the needs of their particular department.

We have reviewed the Touche Ross Report and find we are in agreement with their recommendations in this area. Our next recommendation co-incides with a recommendation of the Touche Ross report.

Recommendation

76 Undertake, in consultation with user managers, a comprehensive inventory of systems development requirements covering new system enhancements and overall reviews of major operating systems.
Recruitment of an additional permanent analyst/programmer for the Department.
Ensure that all policy issues potentially affecting information systems are reviewed and discussed at the Executive Committee to facilitate effective two-way communications on systems related issues and priorities.
Develop training sessions for programme department supervisors to improve their knowledge and awareness of the capabilities of the information system.

8. THE WORKERS' COMPENSATION BUILDING

The building which houses the Workers' Compensation Commission offices, although pleasant to the eye, is not efficient from a claimant's and employee's perspective. In light of feedback received from claimants and Commission employees in terms of waste areas, overcrowding and the lack of privacy there is a need for an overall space utilization plan. We feel that a 36% unutilized floor space, as borne out by a recent study, is unacceptable.

An obvious lack of space planning exists which clearly undermines the positive image of the Commission. Our main concern is the lack of privacy for the claimant, the counsellor and the adjudicator. The present situation is not conducive to good relations between those parties. Also the Commission does not provide an efficient reception area where visitors and claimants can be greeted in a business like fashion and directed to the appropriate services.

Our findings are confirmed by the Touche Ross report when it says:

> There is a general concern [in the Rehabilitation Branch] at the inadequacy of the work space available for counsellors and their clients. There is no provision for privacy to provide counselling in the current open office plan configuration. This situation makes the counselling process difficult and occasionally embarrassing for both staff and clients.
>
> Because of the dual nature of the role and the physical set up of the Switchboard/Reception area, visitors to the Commission do not receive a positive impression. There is no provision in the reception area to adequately accommodate visitors...while they are waiting to meet the person they have come to see...in the case of claimants, often they are obliged to conduct their business with adjudicators in the limited, and less than private, space of the reception area. This is highly unlikely to project a positive image of the Commission to claimants.

Recommendations

77 That the Commission prepare a comprehensive user-needs space plan giving special consideration to the privacy needs of claimant, adjudicator and counsellor.

78 That the first floor of the building be utilized to provide basic first contact type services to the claimant including a waiting room/information/ reception area and an enquiries desk.

9. BRANCH OFFICES

The Commission has Branch Offices in Grand Falls and Corner Brook. The Committee visited both worksites and noted some inadequacies.

There is a general perception in both offices that staff are not as informed of activities as they should be even though computer access is available to them. For example visits by head office are not made on a regular basis and are far too infrequent.

We also noted the lack of office management. Each person is doing his own job and no one person is accountable for management. We feel that one person should be designated to be responsible for overall management in each office.

In Corner Brook while there is adequate space, it is not properly designed to provide privacy. Confidentiality is of utmost importance to the claimant and we recommend that space in both branch offices be utilized more efficiently to reflect the need for privacy.

Representations were made to open a Branch Office in Labrador to serve the needs there. The Committee has considered these requests but finds that the establishment of a branch office in Labrador will not adequately serve these claimants in that vast area. If a branch office were placed, for example, in Goose Bay, this would not help the injured workers on the Coast or Labrador West.

In another section of this report we are recommending installation of a toll free number. Implementation of this recommendation should go a long way in alleviating this concern.

Recommendations

79 That a quarterly visitation programme be established for the Labrador region, with advance public notice of each visit.

80 That one of the existing staff be designated to manage each Branch Office.

81 That the physical space in the Branch Offices be utilized to provide the needed privacy for dealing with claimants.

82 That regular bi-monthly visits be made to each Branch Office by Senior Management as a means of improving communications with head office.

Chapter

8 FINANCIAL OPERATIONS WITHIN THE COMMISSION

We find the Commission lacks a good sound financial planning process. An organization of this size cannot operate efficiently without such a plan.

1. BUDGETING AND FINANCIAL REPORTING

The Commission is weak in areas of budgeting and financial reporting.

Touche Ross states:

> ...Budgeting and financial information provided to Senior Management has not been fully developed and is inadequate. Moreover, it is communicated via the monthly departmental reports and is not...made available directly for review and challenge at the Executive Committee level.
>
> The financial reporting with respect to programme expenditures...is limited...

We support the Commission's efforts to develop a budgeting system but feel this should be given greater priority. We believe that for the Commission to take appropriate corrective action all relevant information must be available and regular monthly financial reports must be submitted to the Executive Committee and the Board of Directors. Without this kind of accountability and responsibility the financial decision making of the Commission is hampered.

Recommendation

83 That a Budget and Financial Reporting Programme be developed and implemented in 1988.

2. AUTHORIZATION AND SPENDING GUIDELINES

We believe that as an integral part of the financial planning process comprehensive guidelines for approval and use of Commission resources are essential. The financial planning process should include the full scope of the Commission. Guidelines for capital spending, wage administration, cash flow, accounts receivable, purchasing etc., need to be documented for consistent application and proper use of the Commission's resources.

Recommendation

84 That comprehensive written guidelines be developed immediately to provide for the proper financial management of the Commission's funds.

3. INTERNAL AUDIT PROCESS

The need exists for an internal audit process in the Commission.

Internal auditors are essential in any large corporation. They are necessary to monitor the activities within the Corporation to ensure that the management and staff are following the policies and procedures, financial and otherwise, of the Corporation.

Recommendations

85 That the Commission appoint an Internal Auditor who will report to the Chief Executive Officer.

86 That an Audit Committee of the Board of Directors be set up to direct and review the activities of the internal and external audit programmes.

4. ACCOUNTS RECEIVABLE

The Committee finds that the Commission's accounts receivables are unacceptably high and the collection process is inadequate. There has not been enough investigation into the composition and aging of receivables and no concerted effort has been made to reduce them to an acceptable level.

Over the last year the Commission has attempted to remedy this problem by the hiring of a collection officer. However, the Committee is still concerned and is of the opinion that a greater degree of formality is required before the desired results are obtained. A comprehensive process must be instituted immediately requiring Senior Management involvement.

Presently s.106(2) of the Act allows the Commission to restrain the employer from carrying on any industry until the amounts due are paid. We feel that while this is a drastic step use of this process would undoubtedly help in the collection of Receivables.

Recommendations

87 That the Collections Officer be responsible for the development and implementation of a comprehensive collections system to reduce outstanding accounts receivable to an acceptable level.

88 That the Commission make more use of s.106(2) of the Act to restrain employers from carrying on any industry until their assessments are paid.

5. OVERPAYMENT OF WORKERS' COMPENSATION BENEFITS

On occasion overpayments are made to claimants. The Committee is of the opinion that the Commission should ensure that all such overpayments are collected. Further, it is this Committee's opinion that overpayments should not be charged to the employer's experience.

Recommendation

89 That in all cases of overpayment to claimants the Commission ensure collection. Such overpayment should not be charged to the employer's experience.

6. INVESTMENT MANAGEMENT

The Commission's investment portfolio is approximately fifty-eight million dollars. However we find that there are no corporate policies for investment management nor is there any direction in regard to investment returns. Reporting to senior management is very limited.

The amended Act now provides for a broader scope of investments and therefore greater control is needed over investment management. We feel a clearly formulated investment policy and strategy plan should be implemented and consideration given to the retaining of the services of an outside money manager. It is noted that the Commission has attempted to respond by engaging consultant services to develop an overall investment strategy.

Recommendation

90 That the Commission develop a clear written policy and strategy for an investment management programme including the determination of the need for external assistance and expertise.

7. ANNUAL REPORT CONTENT

The Committee was told that the annual reports of the Commission are inadequate in terms of presenting the overall activities of

the Commission. This Annual Report must reflect confidence in the institution and therefore as much relevant information and statistics as possible should be reported.

Recommendation

91 That the following additional information be contained in the Annual Report of the Commission.

- **—Internal and External Appeals statistics.**
- **—Activities of the Commission such as rehabilitation programmes, merit-demerit programmes and staff training and development.**
- **—Rehabilitation statistics showing the scope and success of the rehabilitation programme.**
- **—Any significant changes to the Workers' Compensation Act since the previous report.**
- **—Investment management results including cost, yield and market value.**
- **—A report on Occupational Health and Safety programmes and statistics.**
- **—Field audit and investigations statistics.**
- **—Graphic illustrations and supporting statistical data.**

Chapter

9

ASSESSMENT ISSUES

During the hearings considerable dissatisfaction was expressed by employers with present assessment related policies.

While s.86 of the Act gives the Commission the discretion to levy assessments and give notice in such manner and form as the Commission deems adequate and expedient, insufficient provision is made for input by employers.

1. ASSESSMENT RATE PROCESS

Employers complained that assessment rates are increased without any input from them and often without sufficient notice. This lack of communication sometimes seriously affects employers' budget and funding processes.

The Committee feels strongly that notice of any changes in the assessment rate process be communicated to employers in a timely manner and that changes in the process be made after allowing sufficient time for their input.

Recommendations

92 That prior notice of intention to make rate changes be communicated to employers by September 30th of each year.

93 That the consultative process recommended in Chapter 8 be used as a means of allowing employers input into assessment issues.

2. REGISTRATION OF SMALL BUSINESSES, INDEPENDENT OPERATORS AND SUB-CONTRACTORS

We find that the Commission is not pursuing all available avenues to ensure the registration of all small businesses, independent operators and sub-contractors. This results in an overall loss of funds to the Commission and it is an inequitable sharing of risk in the business community.

Recommendations

94 That s.113 of the Act be strictly enforced against all persons or businesses operating an industry covered by the Act where it is found that they are not registered with the Commission.

95 That the Commission establish and utilize a process to identify all unregistered businesses. This could include obtaining information from Retail Sales Tax, Registry of Companies, etc.

3. COVERAGE FOR PRIVATE SCHOOLS

The Committee found that private schools are not included in the Act. We acknowledge this can be a problem where a student from a private school is "on the job training" and sustains a work injury. Such students are not receiving remuneration and consequently are not workers as defined by the Act, nor are they students of an educational institution covered by the Act.

Recommendation

96 That coverage be extended to students of private schools who are placed in "on the job training"

programmes and that a system be put in place for payment of assessments by such schools.

4. DUPLICATION OF ASSESSMENTS

Section 97 of the Act states in part:

> The Commission may make or carry out arrangements with the Workers' Compensation Board of any other province to avoid duplication of assessment on the earnings of workers protected at the same time under the laws of two or more provinces relating to workers' compensation.

Newfoundland has entered into an interjurisdictional agreement for avoidance of duplicate assessments with all Provinces except Nova Scotia and Prince Edward Island. There are employers in Newfoundland who have employees in Nova Scotia and Prince Edward Island and this duplication of assessments is a real problem for them. We believe that Newfoundland should liaise with Nova Scotia and Prince Edward Island with a view to having them amend their Workers' Compensation Acts to provide the same reciprocal arrangement that exists between other Provinces.

Recommendation

97 That Newfoundland liaise with Nova Scotia and Prince Edward Island for the establishment of Reciprocal Agreements covering Workers' Compensation assessments.

Chapter

10

MERIT-DEMERIT RATING

The Workers' Compensation Act, 1983, provides for a merit-demerit rating system as follows:

> 84.(1) The Commission shall adopt a system of merit-demerit rating to determine the assessment rate of an employer in each class or sub-class.
>
> (2) The Commission shall in establishing the merit-demerit assessment rate applicable to an employer in each class or sub-class, consider the rehabilitation efforts made by the employer.

To date, the Commission has not implemented a system of merit-demerit rating, however, it proposes to introduce a pilot programme in a limited number of industrial groups in the year 1988. A discussion paper on merit-demerit rating was distributed to all interested parties for their input to the Commission.

Under merit-demerit it is possible for an employer to influence his Workers' Compensation assessment rate. The availability of a merit-demerit programme should serve as an incentive for employers to pay more attention to accident prevention and the early return of injured workers to the workplace.

The Committee has reviewed the discussion paper issued by the Commission. We make the observation that safe man hours alone is not a sufficient basis for a merit-demerit plan. We believe a more comprehensive system including such factors as accident prevention, accident frequency and severity rates and employers rehabilitation efforts and financial input into safety should be instituted.

We have also reviewed the British Columbia Experience Rating System. A Plan similar to that in British Columbia, including the factors outlined above and any other factors that may be identified should be implemented in this Province.

A comprehensive workable merit-demerit system would have a wide ranging positive impact on the Workers' Compensation system. It would result in:

- more attention on the part of employers to accident prevention, rehabilitation and modified work programmes;
- reduction in accident frequency and severity rates;
- lowering of employer assessed rates.

Recommendation

98 That a Committee comprised of the Commission, employer and employee representatives be appointed immediately to fully research and recommend a merit-demerit system.

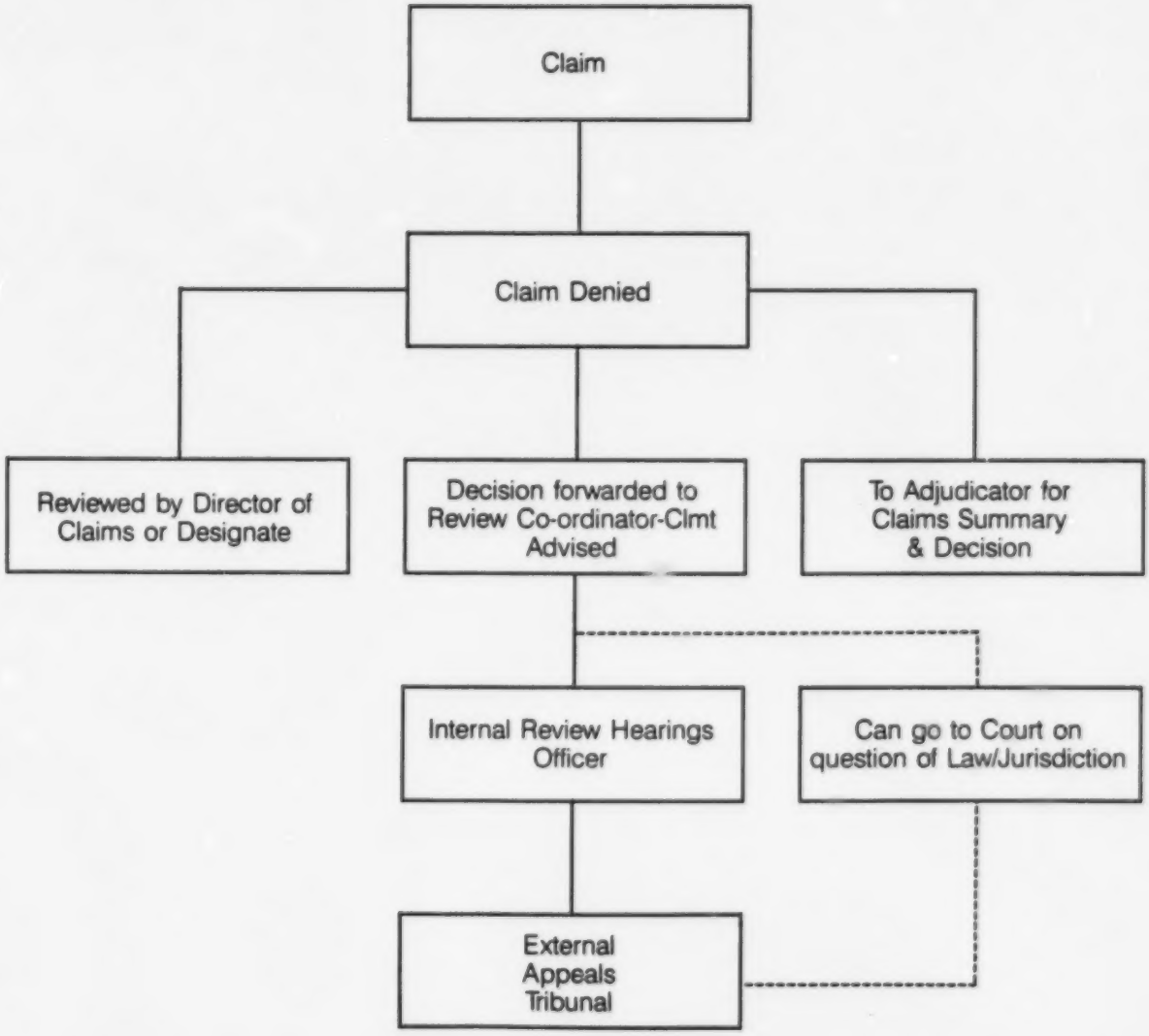
Chapter

11

APPEALS

Prior to the enactment in 1986 of the new Legislation appointing an External Appeal Tribunal the appeal system within the Commission was inadequate and claimants sometimes waited for years to have their appeal heard. However the appeal system within the Commission is now more structured with the addition of an Internal Review procedure and the Independent External Appeal Tribunal. The Committee feels that protection of claimants rights under the Act is of paramount importance. With the review processes now in place a denied claim could be reviewed as many as five times. We feel this gives ample protection to claimants.

The following diagram shows the appeals process.


Claim
Claim Denied
Reviewed by Director of Claims or Designate
Decision forwarded to Review Co-ordinator-Clmt Advised
To Adjudicator for Claims Summary & Decision
Internal Review Hearings Officer
Can go to Court on question of Law/Jurisdiction
External Appeals Tribunal

We support the Independent Appeal Tribunal made up of an equal number of representatives from labour and employers with an independent chairman. The jurisdiction of the Appeal Tribunal is set forth in s.21.4(1) as follows:

> Notwithstanding the power of the Commission to reconsider a matter, where the Commission has made a final determination respecting a matter and all the procedures established by the Commission and this Act respecting a rehearing of the matter have been exhausted, the Appeal Tribunal may hear and has exclusive jurisdiction to dispose of all appeals from actions or decisions of the Commission respecting:
>
> a) an injured worker's or dependent's entitlement to compensation benefits;
> b) an injured worker's entitlement to rehabilitation services and benefits;
> c) provision of medical care;
> d) an employer's assessments;
> e) assignment of an employer to a particular class or group;
> f) an employer's merit or demerit rating.

The decisions of the appeal tribunal are final subject only to review by the Board of Directors pursuant to s.21.7(2) where the Commission is of the opinion that the Tribunal's decision is not consistent with established policy or the intent of the Workers' Compensation Act, in which case the Board of Directors shall direct a review and determination and shall submit the same to the Tribunal for its consideration in light of the interpretation or determination of the Board of Directors. It should be noted that s.21.7(2) states that where the Board of Directors conducts a review it shall either:

> hold a hearing and afford the parties likely to be affected by its determination an opportunity to make oral and written submissions or it shall permit the parties likely to be affected by its determination to make written submissions, as the Board of Directors may direct.

Pursuant to s.21.7(5) the Board of Directors may, pending it's determination, stay the enforcement or execution of any order of the Appeal Tribunal or vacate any order. The above process may also be instituted prior to a matter being decided upon by the Tribunal if that matter requires interpretation of policy and general Law. The Appeal Tribunal's decision may be reviewed by the court only on matters of jurisdiction or on a question of Law.

It should be noted that the Appeal Tribunal's decision shall be based upon the real merits and justice of the case. This is not an adversarial system but an enquiry system. Any person other than the claimant who has an interest in a matter may appear before the Appeal Tribunal.

The Tribunal must make a reasoned decision as soon as possible and such decision must be communicated in writing to any person who appeared before it.

Pursuant to s.21.4(1), employers can appeal to the Appeal Tribunal on assessments and assignment to a particular class or group. The Committee, after extensive review of both the Internal Review and External Appeal systems, finds certain areas lacking in clarity and these must be addressed.

1. s.21.7—WHO IS THE FINAL DECISION MAKER—THE COMMISSION OR THE APPEAL TRIBUNAL?

The Appeal Tribunal pursuant to s.21.4(2), is intended to be the final arbiter of a claim subject however to s.22 and s.21.7 of the Act. The final decision then, as the Act now stands, remains with the Commission.

s.21.7(4) provides that the Board of Directors shall direct a review and determination where the Tribunal makes a decision which, in the opinion of the Commission, is not consistent with the established policy of the Commission or the intent of the Act. Should that determination be made by the Commission the Board of Directors shall resubmit same to the Tribunal for consideration in light of the interpretation or determination of the Board of Directors.

The effect of this section is that if a subsequent decision is made by the Tribunal

and the Commission is still not satisfied that the Tribunal made their decision in light of the Board's interpretation or determination then the same procedure could be repeated over and over again.

The Committee can understand the Commission re-submitting a matter to the Tribunal once, but not further, and the legislation should be amended to reflect this.

Recommendation

99 That s.21.7(1) be amended by adding at the end thereof: and the decision of the Appeal Tribunal shall be final and binding on the Commission.

2. s.22—APPEALS TO COURT

This Section of the Act, if our recommendation in relation to s.21.7(1) is accepted, must also be changed.

Pursuant to this Section an Appeal lies to the Trial Division from any order, ruling or decision of the Commission or Appeal Tribunal on a question of law and on a question as to the Commission's jurisdiction. However it does not state the Appeal Tribunal's jurisdiction.

Recommendation

100 That s.22(1)(a) be amended by deleting the ";" and adding the words "or the Appeal Tribunal's jurisdiction".

3. TIME LIMITS FOR REVIEW AND APPEAL

No specific time limits are set forth in the Act, the Regulations or the Policies of the Commission for an Internal Review or External Appeal. The system should respond in a timely manner to both claimants and employers. Therefore reasonable time limits must be specified for all steps involved in the process and published accordingly.

Recommendation

101 That reasonable time limits be set forth in the Act or Regulations, setting forth the time limits for all steps involved in the appeal process.

4. EXTERNAL APPEAL TRIBUNAL

(a) MAKE UP OF APPEAL TRIBUNAL
Appointment to the External Appeal Tribunal should properly represent the interests of both labour and employer groups. We feel consultation should take place with representatives of these groups when appointing persons to serve on the Tribunal.

Recommendation

102 That all future appointments to the External Appeal Tribunal shall be made after consultation with labour and employer groups.

(b) EXTERNAL APPEAL TRIBUNAL—FULL OR PART-TIME?
As a result of our studies of the experience of other Provinces with External Appeal Tribunals we fear that in this Province the Tribunal could become too costly a bureaucracy. We feel it is too early to tell whether there is a need for a full time Tribunal. It should be remembered that within the Commission there is now an Internal Hearing Process separate from the adjudication level which should decrease the number of appeals to the External Appeal Tribunal.

Recommendation

103 That a complete review of the appeal system be conducted within two years to determine whether a full time External Appeal Tribunal is necessary.

Chapter

12

WORKERS ADVOCATE

Worker Advocates in the Workers' Compensation system have been used in several jurisdictions in Canada for some time.

Strong representation was made to the Committee on the advisability of creating this role in Newfoundland. The need is said to be great especially among workers who need help not only in filling out forms but in presenting their appeals. In many cases union representatives interact with the Commission on behalf of unionized workers who represent only 30% of the workforce.

The Committee has seriously considered recommending the role of Workers Advocates in our Province. It must be remembered that the Commission has now created an Independent Appeal Tribunal, on which there is representation from both labour and employers. A new independent internal review system has recently been put in place and also a new enquiry system for workers has also been added. In addition the Committee has made recommendations on improved communications with claimants and better access to the Commission through the institution of a toll free number. These represent marked improvements in the system and should lessen the need for additional assistance to claimants.

In our opinion the creation of the position of Workers Advocate at this time is premature. There is not enough evidence for us to make a reasoned or accurate decision on this issue. The above mentioned improvements must be given time to work. It is unfair to recommend another addition to the system without allowing the improved processes adequate time to prove their worth.

To accurately assess the need for a workers advocate claims statistical information must be gathered by the Commission during the next two year period. This information should be made available to an independent study team to enable it to make an informed decision on the advisability of instituting this role.

Recommendations

104 That an independent tripartite study, made up of representatives from the Commission, labour and employers, be conducted within two years from the date of this report to study the advisability of creating the role of Workers' Advocate within the Newfoundland Workers' Compensation system.

105 That the Commission immediately create the necessary computer programmes to accurately collect all information necessary to enable the study team to properly assess the need for Workers' Advocate.

106 That if the result of the study team review indicates the advisability of creating the role of Workers' Advocate then it be implemented immediately.

Chapter

13 OCCUPATIONAL HEALTH & SAFETY

The effectiveness of the Occupational Health & Safety Branch is reflected in the safety of the workplace and consequently in the prevention of accidents. While Occupational Health & Safety is not within our mandate the Workers' Compensation Commission funds this group and to this extent the services rendered by them must be considered.

1. RELATIONSHIP BETWEEN THE WORKERS' COMPENSATION COMMISSION AND OCCUPATIONAL HEALTH & SAFETY BRANCH

Prior to 1977 the Workers' Compensation Commission was responsible for Occupational Health & Safety. Since that time the Occupational Health & Safety Branch has been administered by the Department of Labour and funded by the Commission. To ensure that Occupational Health & Safety programmes meet the requirements of industry it is necessary that there be a closer liaison between the two.

It is our understanding that Occupational Health & Safety have access to the Commission's claims data by computer on a daily basis and further that they are continually monitoring this information. Nevertheless the information flow between the Commission and the Branch needs to be improved. No formal communication structure is in place between the two nor is there any real interaction.

We believe that the Commission and the Occupational Health & Safety Branch should set up a consultative process whereby they can better identify and address the safety training and accident prevention needs in the workplace.

Recommendations

107 That the Commission enter into a partnership with the Occupational Health & Safety Branch for the development and implementation of programmes that will identify and address the safety training and accident prevention needs in the workplace.

108 That the Workers' Compensation Act and the Occupational Health & Safety Act be amended to set parameters of the relationship between the Commission and the Branch in relation to the promotion of Occupational Health and Safety in the workplace.

2. TRAINING— ADJUDICATORS AND COUNSELLORS

As Claims Adjudicators and Rehabilitation Counsellors are continually dealing with claimants as a result of accidents in the workplace we feel a greater understanding by them of Occupational Health & Safety is necessary.

This need became evident from presentations during our Public Hearings.

Recommendation

109 That adjudicators and counsellors be given formal training in Occupational Health and Safety matters. That they be encouraged to attend seminars, workshops, etc. provided by Occupational Health and Safety.

Chapter

14

THE LEGISLATION IN GENERAL

During the Committee's review of the Workers' Compensation Act we found certain sections of the legislation deficient and the following recommended changes are for the purpose of updating and clarification of the Act.

1. REGULATIONS OF APPEAL TRIBUNAL

Authority for making regulations governing the Appeal Tribunal are nowhere found in the Act. Presently regulations are made pursuant to s.111 of the Act.

Recommendation

110 That the Act be amended to include specific power for the Appeal Tribunal to make regulations.

2. DISCLOSURE OF INFORMATION

The Committee has reviewed the policy of the Commission in relation to access to information together with the provisions of The Freedom of Information Act for the Province and the Workers' Compensation Act.

s.18(2) of the Workers' Compensation Act allows for disclosure to a claimant or interested party or the legal counsel or authorized representative of same, of any information obtained by the Commission, or which has come to the Commission's knowledge in making, or in connection with, an inspection or enquiry under the Act or any other information contained in records or files of the Workers' Compensation Commission.

The Freedom of Information Act for the Province is subject to the provisions of the Workers' Compensation Act in that personal information which is not available under the Freedom of Information Act is available under the Workers' Compensation Act.

It should be noted, however, that the power to access information is solely in the discretion of the Commission. We find the Commission's policy in this regard is liberal and not at all prohibitive, both to the claimant and the employer. Only information which may be harmful to the claimant will not be released.

As the interested parties to Workers' Compensation are not prejudiced by the Commission's policy we find it unnecessary to make a recommendation.

APPOINTMENT OF REVIEW COMMITTEE

s.114 of the Act provides for a Review Committee to be appointed every five years. The mandate of the Review Committee is to:

> review, consider, report and make recommendations to the Lieutenant-Governor in Council upon such matters respecting this Act and the regulations and the administration of each as the committee deems fit and upon any other of those matters which the Lieutenant-Governor in Council or the Minister may refer to the committee.

In addition The Act, by virtue of s.5 sets forth as one of the Board of Directors' mandatory duties the following:

> (2) The Board of Directors shall
> (d) review this Act and regulations and recommend to the Minister such changes as it deems advisable.

Concern was expressed to the Committee that s.5(2)(d) may supercede s.114 of the Act now that a Board of Directors has been appointed.

The input received by the public hearing process afforded by s.114 is a valid indicator of how the system is working and the Committee feels strongly that s.114 must be retained in the Act in its present form regardless of review by the Board of Directors. It continues to give independent evaluation to the Government untainted of any biases which may naturally flow from within the Commission.

Recommendation

111 That s.114 of the Act remain in the Workers' Compensation Act.

4. PROGRESS REPORTS

The Committee believes that information should be made available on the progress made by the Commission on the implementation of recommendations contained in the present or any future Review Committee's Report. We further recommend that the Annual Report of the Commission include an update on such recommendations.

Recommendation

112 That the Annual Report of the Workers' Compensation Commission include an up to date report of any implementation of the Review Committee's recommendations.

5. TIMING OF AMENDMENTS TO LEGISLATION

Representation was made to the Committee that changes in the legislation should not be made for at least one year before and during a Review Committee's deliberations.

The Committee is of the opinion that no legislative changes should be made within this time frame for two reasons; firstly, the Committee's mandate is very broad and consequently any changes made may not be recommended, and, secondly, this would avoid reactive legislation which may be put in place without the input of all interested parties.

Recommendation

113 That no changes be made to legislation governing Workers' Compensation within one year of the appointment of and during a Review Committee's deliberations pursuant to s.114 of the Act.

6. LEGISLATIVE AMENDMENTS GENERALLY

In the past legislative changes to the Workers' Compensation Act were made without sufficient input from interested parties, labour and employers. Their only opportunity for input was the five year review pursuant to s.114.

The input of these groups is vital to the success of the system. For this reason labour and employer groups should be advised well in advance of any proposed amendments affecting them to allow adequate time to respond thereto prior to the implementation of such legislation.

Recommendation

114 That prior to any changes to the Workers' Compensation Act or Regulations, Labour and Employer groups be advised thereof to allow adequate time for their input prior to implementation of changes.

7. CHIEF EXECUTIVE OFFICER—APPOINTMENT AND REMOVAL

The present Chief Executive Officer's term of appointment is "on good behaviour".

We received representation that it would be more appropriate to make appointment to this position "at pleasure" or for a "term certain" rather than the present mode of appointment.

The Board of Directors, being the governing body, is in the best position to know whether a Chief Executive Officer meets the needs of the Commission and should have the power to recommend to Government the removal of such person should he prove unsatisfactory and recommend the appointment of such person.

It should be noted that the above does not reflect in any way on the present Chief Executive Officer. It concerns only future appointments and/or removals.

Recommendation

115 That future Chief Executive Officers be appointed "at pleasure" or for a "term certain" by the Board of Directors.

8. CHANGES IN BENEFIT STRUCTURE

The Committee finds that in the past the benefit structure of the Commission has changed without due regard to proper review and analysis. It is essential to determine the financial costs of any benefit changes prior to their implementation. The following are examples of changes that we believe were made without proper study of their impact:

Permanent Partial Disability conversion of pension to Extended Earnings Loss.

Implementation of 10% Annuity.

Raising of ceiling to $45,500.00.

Recommendation

116 That no major changes be made to the benefit structure of the Workers' Compensation system without an in-depth study of the overall impact of such change.

Chapter

15

COMMUNICATIONS

Effective communication is a key to successful operation of an organization. Lack of good communications with the stakeholders leads to mistrust and confusion within the system.

During our hearings it became evident that there exists a significant communication gap between the Commission and its employees, claimants, medical practitioners and employers, in fact it can be said that communication in all areas is deficient. The information obtained in our public hearings is supported by both the Touche Ross and ISER Reports.

Our recommendations focus both on internal and external communications and the problems experienced by the various interested parties.

1. INTERNAL COMMUNICATIONS

Although some aspects of communications within the Commission have been covered in other areas of this report we must reiterate some of the problems that we see within the Commission.

The state of internal communications is accurately set forth by Touche Ross as follows:

> The organization has matured in a very short period and inevitably the sense of community within the Commission has been affected. Communications between management and staff have, in many instances become more formal and sometimes removed.
>
> Communications between senior management and staff have not always been effective, occasionally leading to disquiet and even confrontation. Overall leadership and direction have been provided by the Chairman. However, the quality of leadership at the senior and middle management level is uneven...Labour relations and human resources in general have not been handled with the patience and sensitivity they require. Pockets of low morale have developed in specific areas and a gulf has opened between senior management and staff.
>
> Communication between manager and staff is less than satisfactory. Through the period of rapid changes communications with employees have tended to be critical rather than supportive. Employees indicated that often their input is not requested or, if provided, not acknowledged, and they are not being kept fully informed by management of initiative being considered or taken. This gap...has, in certain areas, weakened employee motivation and morale.

ISER states:

> [Counsellors] also feel misunderstood and abandoned by Commission Management.
>
> Morale among the rehabilitation counselling staff is low; frustration is high...These circumstances are affecting counsellors' attitudes and delivery of service.
>
> Claims and Medical personnel sometimes fail to communicate clearly with both the Rehabilitation department and with the clients.

In our interviews with the Commission staff we found that good internal communications were lacking in most areas and this had a

negative impact on the operation. For the Commission to fulfill its mandate the management and staff must be able to communicate more effectively with each other.

2. EXTERNAL COMMUNICATIONS

A. CLAIMANTS

The majority of claimants appearing at our public hearings complained about the inadequacy of the Commission to communicate effectively with claimants. They felt they were misunderstood; getting the run around; were unaware of what was expected of them; they had no one to turn to; could not find out what programmes were available to them; and were not sufficiently informed of policies and procedures of the Commission. In a nutshell, claimants were frustrated and confused.

To illustrate,

> ...and I wrote them and asked for an appeal..., two years in October past..., they cut me on September, 1984. I wrote them in October 1984 and asked them for an appeal and I have not heard from them until this day.
>
> ...I'm a second class citizen, that's the feeling I get. I gather this is the feeling that a lot of people on compensation are getting, second class citizens, because of the way they're treated.
>
> ...I'm going to write the Worker's Compensation on your behalf, if I get a reply in six weeks that's great...
>
> ...the way they treated you was as if you were a crook. Out to get 'em or looking for something for nothing.
>
> ...I'm after phoning into the Compensation Board and I'm after getting the run around, you know. In fact, I'm going around in circles.
>
> ...I'm not that well educated and I don't understand everything that's in there the Act but there's none of that Act explained to me...

These are just a sampling of complaints received by the Committee.

The ISER Report also states:

> More information should be provided in understandable terms—regarding the bureaucracy of WCC, and the programmes available. After 5 years of depending on WCC I still do not understand how things work. My only link to WCC has been my rehabilitation counsellor who is very helpful and without whom I would be totally lost in the maze.
>
> ...[By] the time recipients meet with Rehabilitation Counsellors they have much mistrust of the whole Compensation system. Counsellors are faced with persons who have been raked over the coals because of the red tape and the general attitude by Workers' Compensation that every claim is an attempt to abuse the system.
>
> ...You're okay if you understand the WCC system and you're willing to fight. But no one comes to you. You have to look for information.

We feel that this kind of frustration and confusion with the system is not conducive to proper relationship with claimants. It is clear to us that the Commission must now take the necessary action to improve communications in this area.

B. EMPLOYERS AND EMPLOYEE ORGANIZATIONS

Submissions received by the Committee from employer and employee organizations stressed the need for improved communications on the part of the Commission. The Committee feels that the onus is on the Commission to communicate with them regarding the following:

- —Effective safety and accident prevention programmes.
- —Information on claims decisions.
- —Employers input into major

decisions by Workers' Compensation affecting employers.

— Information on the employees and employers role in rehabilitation.

— Key policy decisions of the Commission affecting employers and employees.

— The assessment/rate process.

C. PUBLIC/MEDIA

We feel that the Commission must place more emphasis on keeping the public/media better informed on Workers' Compensation matters. The Commission has hired a public relations person whose duties include:

— analyzing the Commissions public relations needs.

— plans long and short term public relations policies, projects and activities.

— identifies opportunities to enhance public understanding and acceptance of the Commission.

— prepares information publications, external and internal.

We see this as a positive move on the part of the Commission however there remains inadequacies in the overall communications of the Commission.

D. MEDICAL PRACTITIONERS

Our attention was drawn to the fact that medical doctors are not sufficiently informed regarding their role in the Workers' Compensation system. We feel the medical profession plays an important role in the Workers' Compensation process and the Commission should ensure that doctors are better informed.

E. TOLL FREE NUMBER

The Committee was repeatedly urged to recommend the introduction of a toll free number. We believe workers are entitled to timely responses to their enquiries. It appears that numerous telephone calls have to be made by claimants before benefits are received; to find out status of a claim; the medical aid available; rehabilitation services available; etc. The cost to the claimant can be considerable.

As we see it claimants seeking information have only two other options: either they can visit the Commission at St. John's or one of the Branch Offices or they can write a letter to the Commission.

Neither of these options is viable. Travel is expensive and remote areas abound. Letter writing takes time and may not be efficient.

We realize that institution of a toll free number may represent additional cost to the system however it will result in more adequate and timely service to the claimant.

We make the following recommendations regarding communications:

Recommendations

117 That the Commission provide extensive ongoing training for staff to enable them to communicate more effectively.

118 That to address the communication problems outlined in this report the Commission should immediately provide for the services of a communications specialist. This position should also include the public relations function of the Commission.

119 That the Commission establish a formal consultative process with employer and employee representatives with respect to any proposed significant policy and programme changes.

120 That the Commission make all policies and procedures available to all interested parties.

121 That the Commission institute a programme of workshops and seminars, etc. for employers, employees, claimants and the medical profession to ensure effective communication regarding Workers' Compensation

programmes, policies and procedures.

122 That the Commission make immediately available to all of Newfoundland and Labrador a toll free number.

Appendix

1 THE WORKERS' COMPENSATION SYSTEM IN NEWFOUNDLAND AND LABRADOR

REVIEW COMMITTEE, SCHEDULE OF PUBLIC HEARINGS AND PRESENTATIONS INCLUDING DATE, PLACE AND PRESENTERS

Monday, February 2, 1987

WABUSH. LABRADOR

Labour

United Steelworkers of America (Local 6285)
— Mike Bouzane, Workers' Committee
— Paul Hawco, Workers' Committee

United Steelworkers' of America (Local 5795)
— Darrel J. Brenton, Co-Chairman Joint Occupational Health & Safety Committee

United Steelworkers of America
— John Kingston, Staff Representative

Employer

Wabush Mines Ltd.
— Greg Anderson, Safety Supervisor
— Ted Perry

Worker

Eileen Ludie

Tuesday, February 3, 1987

GOOSE BAY, LABRADOR

Employer

Labrador Transport Ltd.
— Harry Shouse

Worker

Jordan Michelin

Tuesday, February 10, 1987

HARBOUR GRACE

Workers

Aiden Hibbs
John Deering
J. Harrington
Richard Penney

Thursday, February 26 1987

ST. JOHN'S

Associations

Canadian Bankers' Association
— Bruce Grant, Lawyer

The Newfoundland & Labrador Chiropractic Association
— David Buffett, Lawyer
— Dr. Laurie Goyeche, Chiropractor

Labour

United Steelworkers of America
— Robert Young, Representative

Newfoundland Fishermans Food & Allied Workers Union
— Kevin Carroll, Business Agent

Workers

Michael Nolan
Paul Walsh
Ian Hawkins
Robert Fennelly
Sandra Foley
Gary Wall
Donald Jarvis
Jeremiah Conway

Monday, March 2, 1987

STEPHENVILLE

Labour

Newfoundland & Labrador Federation of Labour
—William Parsons, President

Workers

Ed Cluett
Fred Madore
Gerald King
Eileen Stead
Lucy Anderson
Fred Simms
Bernard White
Ross Companion
Anthony Blanchard
Walter Wells
John Simms

Tuesday, March 3, 1987

PORT AUX BASQUES

Worker

Ronald Jeans

Tuesday, March 10, 1987

BONAVISTA

Workers

Alexander Martin
Roy Butler
Lloyd Cooper

Wednesday, March 11, 1987

CLARENVILLE

Association

MUN Extension Dept.
—Freeman Compton

Workers

Bramwell Walters—Port Rexton
Hubert Tucker—Bunyan's Cove
Barbara Keats (Calvin)

Thursday, March 26, 1987

GANDER

Labour

Brotherhood of Railway & Steamship Workers
—John Dooley, Vice President

Employer

Gander River Tours Ltd.
—Terence Cusack, Secretary

Workers

Ewen Barnes
Ron Collins
Robert Blackwood
Kay Snow
Otto Fudge

Monday, March 30, 1987

MARYSTOWN

Workers

James Bolt
Nat Bursey

Tuesday, March 31, 1987

ST. LAWRENCE

Association

St. Lawrence Town Council
—Mr. Fabian Aylward, Mayor

Tuesday, March 31, 1987

MARYSTOWN

Labour

Fish Food & Allied Workers Union (Local 465)
—Matt Murphy, Business Agent

Newfoundland Fisherman Food & Allied Workers (Local 1252)
—Calvin Peach, President
—Walter Matthews
—Charles Baker

Workers

Joan Power

Phoni Farewell
Bernice Drake Walter Miller Oswald Hiscock
Russ Hollett
Roy Bonnell

Wednesday, April 8, 1987

BAIE VERTE

Labour

United Steelworkers of America (Local 7713)
—Gerald Dwyer, President
—Ed Furey, Vice President

Workers

Gerald Oxford
Winston May

Thursday, April 9, 1987

GRAND FALLS

Associations

Newfoundland Lumber Producers Association
—Robert Dingwell

Grand Falls Chamber of Commerce
—J.E. Moore, President
—W.B. Tucker, Executive Director

Labour

United Steelworkers of America (Local 5457)
—John Budden, President

Canadian Paper Workers' Union (Local 88)
—Ron Smith, President

Canadian Union of Public Employees (Local 990
—Terry Goulding, Representative

Canadian Union of Public Employees (Local 59)
—David LaFresne, Representative

Workers

Yvonne Casey
—Joe Tremblett

D. Pardy
Alex Hamilton
Paul Noftall
Mr. Tuck

Monday, April 27, 1987

CORNER BROOK

Association

Deer Lake Chamber of Commerce
—Bill Byrne, Representative

Employer

Lundrigan Group Ltd.
—Mark King

Labour

Canadian Union of Public Employees
—Roger Grimes, Representative

Workers

Deborah Meaney
Phyllis Williams
Eileen Stead
Cec Collins
Des Kelly
Gary O'Blenis
Nonia George

Tuesday, May 5, 1987

ST. ANTHONY

Worker

Greg Whelan

Wednesday, May 6, 1987

PORT SAUNDERS

Workers

Howard Coombs
Ray White
Henry Keans, Portland Creek

Wednesday, May 13, 1987

ST. JOHN'S

Associations

Newfoundland Industrial Health & Safety
—Roy Foster, Director
—Dave Rex, 1st Vice President
—W. French

—Ray O'Neil, President

Newfoundland & Labrador Employers Labour Relations Council
—Wallace Sainsbury, President
—Gerard MacDonald, Executive Director
—William Alcock, Treasurer

Newfoundland Hospital & Nursing Home Association
—Charles Rennie, President
—John Peddle, Representative
—Gordon Jones, Member

Associations

Newfoundland Pharmaceutical Association
—Douglas Butt, Chairman
—James O'Mara, Executive Secretary

Worker

David Butt

Thursday, May 14, 1987

ST. JOHN'S

Associations

St. John's Board of Trade
—John O'Dea, President

Canadian Manufacturers' Association
—Seria Weldon, Legislative Affairs Officer
—Gerry Smith, Chairman Newfoundland Branch
—Burf Ploughman, Branch Administrator
—Mark King, Industrial Relations Committee
—Harold Smith, Industrial Relations Committee

Labour

Newfoundland & Labrador Federation of Labour
—William A. Parsons, President
—Frank Taylor, Secretary-Treasurer

Canadian Union of Public Employees
—Robert Wells, Health & Safety Representative

Worker

John Hart

Monday, May 25, 1987

ST. LAWRENCE

Associations

Town Council of St. Lawrence
—Fabian Aylward, Mayor

Town of St. Lawrence
—Garrett Handrigan, Lawyer

Town of Lawn
—Wm. J. Lockyer, Mayor

The Widows of St. Lawrence

Louise Beck

Widows

Charlotte Kelly
Vivian Clarke
Isabel Beck
Mildred Beck
Matilda Fitzpatrick

Workers

Martin Rennie
Neil Tarrant
Mr. Doyle
—Dr. Hollywood

Student

Betty Lou Drake, on behalf of her Mother
Raymond Stapleton, on behalf of his Mother

PUBLIC HEARINGS WITH NO PRESENTERS

February 11, 1987	Placentia
February 20, 1987	Trepassey
March 26, 1987	Lewisporte
April 23, 1987	Fogo

Appendix

2 WRITTEN SUBMISSIONS NOT PRESENTED AT PUBLIC HEARINGS

WRITTEN SUBMISSIONS NOT PRESENTED AT PUBLIC HEARINGS

Blagdon, Tilley & Company
—St. John's, Nfld.

Canada Post Corporation
—Halifax, N.S.

Corner Brook Pulp and Paper Mill Limited
—Corner Brook, Nfld.

Department of Forest Resources and Lands
—St. John's, Nfld.

Nelson Doucette
—St. John's, Nfld.

Edward Duffey
—Aquathuna, Nfld.

Max Evans
—Isle aux Morte, Nfld.

Peter Fenwick, M.H.A.
—Menihek District

Edward Fleming
—Noel's Pond, Nfld.

Heat Seal Limited
—St. John's, Nfld.

Independent Fish Producers Assocation
—R.W. Wilton
—Lewisporte, Nfld.

Olivia Lambe
—Lawn, Nfld.

Charles Murphy
—Lawn, Nfld.

Newfoundland & Labrador Construction Association
—St. John's, Nfld.

Newfoundland & Labrador Development Corporation
—St. John's, Nfld.

Donald Pardy
- Grand Falls, Nfld.

Leonard Parsons
—Point May, Nfld.

Participants in Work Choice Program
—Herman Angel; Richard Chafe; Brenda Dunn; Martin Fennelly; Lynn Ghaney; Gerard Hennessey; Eric Riche; David Sweetapple

Len Simms, M.H.A.
—Grand Falls, Nfld.

Lucy Slaney
—St. Lawrence, Nfld.

T & H Fisheries
—Cox's Cove, Nfld.

Town of Deer Lake
—Deer Lake, Nfld.

Town of Stephenville
—Stephenville, Nfld.

Workers' Compensation Commission
—St. John's, Nfld.

Appendix

3 PUBLICITY

Dear Sir/Madam:

As you may be aware, a committee has been formed to review and report on all matters concerning The Workers' Compensation Act and its Regulations. It is the duty of this committee to gather as much information as possible on Workers' Compensation and to submit a report to the Minister of Labour when the committee has completed its task.

For the committee to properly do its job, it must receive information and opinions from as broad a spectrum of the public as possible. To accomplish this, hearings have been scheduled over the next four(4) months in twenty(20) Communities in the Province of Newfoundland and Labrador. The dates and locations of these hearings will be separately advertised.

If there are any areas in the Workers' Compensation Act, its Regulations or Administration, about which you are concerned you are invited to present either an oral or written submission. Advance notice to the Committee of intention would be appreciated. Written submissions may be forwarded directly to our offices at the following address:

Review Committee
Workers' Compensation Act
P.O. Box 9000, Stn. "B"
St. John's, Nfld.
A1A 3B8

If you require any further information or assistance, please do not hesitate to contact the committee office, telephone 579-4029.

NOTICE OF PUBLIC HEARINGS AS PUBLISHED

PRESS RELEASES
CBC in St. John's, Corner Brook, Gander, Grand Falls, Labrador and Goose Bay.
All stations of VOCM.

ADVANCE NOTICE OF HEARINGS
December 13, 1986—Published in the Evening Telegram, Western Star and all of the Robinson & Blackmore newspapers in Newfoundland and Labrador.

SCHEDULE OF HEARINGS
January 5, 1986—Published in the Evening Telegram, Western Star and all of the Robinson & Blackmore newspapers in Newfoundland and Labrador.

ONE WEEK ADVANCE NOTICE OF LOCATION OF HEARINGS
Published in applicable newspaper where hearing was being held.

ASSOCIATIONS GIVEN NOTICE OF PUBLIC HEARINGS

All Labour Unions
Association of Professional Engineers of Newfoundland
Canadian Union of Public Employees
Members of the House of Assembly
Newfoundland Construction Building Trades Council
Newfoundland Construction Labour Relations Association
Newfoundland Teachers Association
Newfoundland Hospital Association
Provincial Chambers of Commerce
St. John's Board of Trade
The Newfoundland Association of Public Employees
The Newfoundland & Labrador Construction Association
The Newfoundland & Labrador Federation of Labour
The Newfoundland & Labrador Federation of Municipalities
The Newfoundland & Labrador Employers Labour Relation Council